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ABSTRACT

This document presents testimony and prepared statements from the Congressional hearing called to examine proposed legislation concerning the public welfare of juveniles. The two bills considered were proposed to promote the public welfare by protecting dependent children and others from institutional abuse (S.520) and by removing juveniles from adult jails (S.522). Opening statements from subcommittee chairman, Senator Orrin G. Hatch, and Senator Arlen Specter, are presented, and the texts of the two bills are provided. Testimony and prepared statements are given from an administrator from the Office of Juvenile Justice and Delinquency Prevention (OJJDP); a priest who is the director of Covenant House, a crisis shelter for homeless and runaway children and youths in New York City; a detective from the New York Police Department's Runaway Division; and representatives from the Youth Law Center in San Francisco, the National Coalition for Jail Reform, and the Division of Youth Services for Essex County, New Jersey. Other testimony is provided from a representative of the Juvenile Justice Center (JJC) of Pennsylvania and two young girls who were residents of the JJC Emergency Shelter Care. Opposition to the enactment of either bill from the United States Department of Justice is explained by the OJJDP administrator. Testimony in favor of and in opposition to the bills is given by other witnesses. [The appendix contains additional submissions for the record which include a letter from the county executive of Fond du Lac County, Wisconsin, and one from the Governor of Alaska explaining problems Alaska faces in complying with the Juvenile Justice and Delinquency Prevention Act. (KGB)

S. HRG. 98-1225

# PUBLIC WELFARE OF JUVENILES

ED260318

## HEARING

BEFORE THE

## SUBCOMMITTEE ON THE CONSTITUTION

OF THE

## COMMITTEE ON THE JUDICIARY
## UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

## S. 520

A BILL TO PROMOTE THE PUBLIC WELFARE BY PROTECTING DEPENDENT CHILDREN AND OTHERS FROM INSTITUTIONAL ABUSE

AND

## S. 522

A BILL TO PROMOTE THE PUBLIC WELFARE BY REMOVING JUVENILES FROM ADULT JAILS

JUNE 14, 1984

Serial No. J-98-128

Printed for the use of the Committee on the Judiciary

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# PUBLIC WELFARE OF JUVENILES

THURSDAY, JUNE 14, 1984

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:12 p.m., in room SD-226, Dirsken Senate Office Building, Hon. Orrin G. Hatch (chairman of the subcommittee) presiding.

Present: Senator Specter.

Staff present: Richard Bowman, committee staff; and Stephen J. Markman, chief counsel; Randall R. Rader, general counsel; Dee V. Benson, special counsel; and Carol Epps, chief clerk, Subcommittee on the Constitution.

## OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. As chairman of the Senate Judiciary Committee's Subcommittee on the Constitution, it is my pleasure to call this hearing to order. The bills before us are S. 520 and S. 522, both of which deal generally with the institutionalization of juveniles. These bills have been previously considered in hearings before the Judiciary Committee's Subcommittee on Juvenile Justice, which is chaired by my dear colleague Senator Arlen Specter. Senator Specter is here today and I welcome him and thank him for his substantial efforts in establishing a legislative record on these bills. And I also thank him for his and his staff's fine work and cooperation with me and my staff in arranging for today's hearing. Senator Specter's able leadership in the field of juvenile justice is widely recognized and respected, and we are pleased to have him here today.

Before we turn our attention to the witnesses who have been invited to appear at this hearing, let me state briefly the nature of the legislation we are here to consider.

Both of these bills are directed against the States and both are ostensibly based on the 14th amendment of the U.S. Constitution as justification for consideration by the Federal Congress.

S. 520 prohibits any State from assigning to a secure facility a juvenile nonoffender who is in the care or custody of the State. A nonoffender is defined in the bill as one who has not committed an offense that would be a crime if committed by an adult. In practical effect, this means that juveniles who commit any of the so-called status violations such as truancy or delinquency or simply

run away from home, cannot, for any reason, be placed in secure detention facilities. Under this bill, the most a State or municipal police force could do to an apprehended runaway youth, for example, is place him in a nonsecure facility from which the youth is free to leave as he chooses.

The second bill, S. 522, prohibits the States from placing a juvenile who has been arrested for or convicted of a criminal act, in a secure facility where adult offenders are also housed. The bill requires separate physical structures for juvenile and adult offenders, with few, if any, exceptions. It would not be acceptable, under this bill, for a municipality to segregate juveniles and adults in the same correctional institution or facility.

There can be little doubt that much of the substance of these bills is desirable. Status offenders should be sparingly detained in secure facilities and it is good policy to separate youth offenders from adults in our jails. But there is real concern over whether these particular bills are necessary or desirable in their present form. The worthy objectives they seek have been and are being achieved in significant respect under the Juvenile Justice and Delinquency Act of 1974, which is presently in full force and is being ably and actively administered by the Department of Justice. Since passage of that program, which is participated in by all but 4 of the 50 States, any problems that had existed with the joint housing of adults and juveniles have been all but eliminated; and the unnecessary institutionalization of status offenders has been reduced to a minimum. In addition, the absolute nature of the provisions of the bills may actually create more problems than they solve in the opinion of some. In the area of runaways alone, for example, the unbendability of S. 520 may have the unsavory effect of pushing impressionable youth of tender years onto our city streets rather than into reunions with their parents.

And, of course, there is concern that by this legislation the Federal Government is unnecessarily inserting itself, under a questionable constitutional basis, into affairs that are traditionally the province of State and local governments.

[The bills S. 520 and S. 522 follow:]

98TH CONGRESS
1ST SESSION

# S. 520

To promote the public welfare by protecting dependent children and others from institutional abuse

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 17 (legislative day, FEBRUARY 14), 1983

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

# A BILL

To promote the public welfare by protecting dependent children and others from institutional abuse.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Dependent Children's Protection Act of 1983".

SEC. 2. (a) The Congress hereby finds that—

(1) deprived, neglected, and abused juveniles and juveniles who present noncriminal behavior problems are frequently assigned to the care and custody of the States; and

(2) the placement of these juveniles in secure detention, treatment, or correctional facilities constitutes punishment because such placement—

(A) imposes unnecessary burdens on the liberty of the juveniles;

(B) unnecessarily endangers the personal safety of the juveniles;

(C) abridges the juveniles' right to care and treatment;

(D) interferes with the right to family integrity of the juveniles and further exacerbates the alienation of the juveniles from family, peers, and community;

(E) increases the probability that these juveniles will later engage in delinquent or criminal behavior; and

(F) stigmatizes the juveniles by associating them with criminal behavior.

(b) The Congress declares that the constitutional rights of juveniles guaranteed by the fourteenth amendment to the Constitution of the United States shall be enforced by prohibiting the punitive detention of juveniles who have not been adjudicated to have committed any offense that would be criminal if committed by an adult.

SEC. 3. Add to chapter 21 of title 42 the following section:

"SECTION 1. No State shall assign a juvenile nonoffender committed to its care or custody to any secure detention, treatment, or correctional facility.

"SEC. 2. For purposes of this Act—

"(a) the term 'juvenile nonoffender' means any person under age eighteen, who has not been adjudicated to have committed an offense that would be criminal if committed by an adult, unless that person is lawfully in detention pending trial of charges relating to an offense that would be criminal if committed by an adult.

"(b) the term 'secure detention, treatment, or correctional facility' means any public or private residential facility which—

"(1) includes construction fixtures designed to restrict physically the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

"(2) is used for placement, prior to or after adjudication and disposition of any juvenile who has been charged with delinquency, or for holding a person charged with or convicted of a criminal offense; or

"(3) is used to provide medical, educational, special educational, social, psychological, and vocational services, corrective and preventative guidance and training, and other rehabilitative services designed to protect the public. *Provided, however,* nothing contained in this Act shall be interpreted to prohibit any State from committing any juvenile to a mental health facility in accordance with applicable law and procedures.

"(c) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"SEC. 3. Any person aggrieved by a violation of this Act may bring a civil action for damages and equitable relief.".

98TH CONGRESS
1ST SESSION

# S. 522

To promote the public welfare by removing juveniles from adult jails.

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17 (legislative day, FEBRUARY 14), 1983

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

# A BILL

To promote the public welfare by removing juveniles from adult jails.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Juvenile Incarceration Protection Act of 1983".

SEC. 2. (a) The Congress hereby finds that—

(1) juveniles account for nearly 20 per centum of the arrests for crimes in the United States today;

(2) an estimated four hundred and seventy-nine thousand juveniles are held in pretrial detention in adult jails and lockups each year;

(3) the holding of juveniles in adult jails encourages delinquency and criminal behavior; and

(4) delinquency results in enormous annual cost and immeasurable loss of human life, personal security, and wasted human resources.

(b) The Congress further finds that the holding of juveniles in adult jails and lockups constitutes punishment, violates the juveniles' due process right to fundamental fairness and unnecessarily endangers the personal safety of juveniles. Congress declares that the constitutional rights of juveniles guaranteed by the fifth and fourteenth amendments to the Constitution of the United States shall be enforced by prohibiting the detention of juveniles in jails and lockups also used for adults.

SEC. 3. Add to chapter 21 of title 42 the following new sections:

"SECTION 1. After December 8, 1985, no person under age eighteen shall be detained or confined in any jail or lockup for adults, except that the Attorney General shall promulgate regulations that—

"(A) recognize the special needs of areas characterized by very low population density with respect to the detention of juveniles; and

"(B) shall permit in extraordinary cases the temporary detention in adult facilities of juveniles accused

of serious crimes against persons where no existing acceptable alternative exists and where the juveniles so detained shall have no regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

"SEC. 2. Any person aggrieved by a violation of this act may bring a civil action for damages and equitable relief.".

Senator HATCH. These issues and others will be discussed at today's hearing, and I would like to welcome our distinguished guests, and before we do, I will turn to my friend from Pennsylvania, Senator Specter, and of course, Senator, we are happy to take any statement you care to make.

**STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you very much, Mr. Chairman.

At the outset, I thank and commend the distinguished chairman of this subcommittee, Senator Hatch, for convening these hearings, and I thank him for the perceptive remarks that he has made at the opening of these hearings.

My own view on the subject is that some decisive action must be taken by way of establishing of mandatory standards at the Federal level to achieve two very important policy objectives.

One is to see to it that the children who are runaways or who are neglected are not placed in jails because there is no other place to put them. And second, to avoid having juveniles charged with offenses mixed with adults as a generalization.

My findings on the record are, and we will get into this in the testimony of Mr. Regnery who we thank for coming today, that these are major problems and not insignificant problems. We have a situation where there are some 300,000 to 500,000 juveniles who are charged with crimes, offenses, who are mixed with adult offenders.

The consequence of mixing juveniles and adults is simply to teach juveniles how to commit more crimes. They are training schools, and I have seen that again and again and again with the experience that I have had as a prosecuting attorney.

With respect to the problem of so-called status offenders, and that is a misnomer, there are at least in the 22,000 range according to the statistics which come from the office of Juvenile Justice and Delinquency Prevention. That does not include the nonparticipating States, and even among the participating States, according to the GAO study, there are many juveniles who are status offenders who are in jails.

Senator Hatch has already made a number of very important comments in terms of possible modifications of the legislation which I have proposed in Senate bill 520 and Senate bill 522, and Mr. Regnery's prepared statement contains ideas for modifications.

Some changes have already been incorporated. In terms of, for example, where you have 16- or 17-year-olds who are charged with crimes of violence, there should be an exception to the prohibition that those juveniles be kept separate from adult offenders because in some circumstances even though you have someone 16 or 17 you may really be in an adult offender status.

That is only to say that there are approaches and modifications. The people in this country are very critical of the courts for usurping legislative functions, and Senator Hatch and I and others on the Judiciary Committee and in the Senate and the Congress are appropriately, I think, critical of judges when they usurp legislative functions.

This, it seems to me on the definition of what is "a constitutional right," first ought to be a matter for the legislature, first ought to be a matter for the Senate, and this is a subject which we will have an opportunity to discuss with Mr. Regnery.

But these are matters of public policy, constitutional interpretation which ought to be made here first. I do not think that the U.S. Congress ought to be dragged, kicking and screaming at the changes everytime in criminal procedure when the Federal courts or the Supreme Court tell us what it is.

I think our experience is sufficient to take a leadership role in this very important field, but most of all today, I am very appreciative, given the impossibly difficult schedules in the United States, that Senator Hatch has found time to have the hearing on his subcommittee on constitutional rights on this joint referral.

Thank you, Senator Hatch.

Senator HATCH. Thank you, Senator Specter.

Our first witness today will be Alfred S. Regnery, the administrator of the Office of Juvenile Justice and Delinquency Prevention in the U.S. Department of Justice.

We are pleased to welcome you, Mr. Regnery. You are an excellent lawyer and a recognized expert in the field of juvenile justice and we certainly appreciate your coming to this hearing.

We look forward to listening to you and hearing what you have to say.

**STATEMENT OF ALFRED S. REGNERY, ADMINISTRATOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPARTMENT OF JUSTICE**

Mr. REGNERY. Thank you very much, Senator Hatch. It is always a pleasure for me to come up here and be on this side of the table after having spent 3 years on the other side of it over there.

Senator HATCH. Well, we miss you on the other side of the table, but we are very pleased with what you are doing down there.

Mr. REGNERY. Thank you. I have a prepared statement which I would ask be placed in the record.

Senator HATCH. Without objection, we will place your complete statement in the record as though fully delivered.

Mr. REGNERY. Thank you. I am prepared to summarize it and also to add a couple of things that are not in my statement which I think are pertinent.

First of all, let me state that my statement was written based on the bill before it came out of the Juvenile Justice Subcommittee, and I understand there were some changes made that I am afraid I was not cognizant of, and there are a couple of points in my statement which do not recognize that. I will point those out as I go along.

The Department of Justice opposes the enactment of S. 520 and 522 for a number of reasons, as I point out in my statement. I will not go through each of those in my oral recitation of why, but I think there are some of them that are worth concentrating on for a minute. Let me just list basically what those objections are first. To begin with, we believe that the scheme that is used in the bills of

accomplishing the goals is too inflexible and too coercive against the States to achieve what the bills want to do.

I can certainly state that we agree, in essence, with the objectives of what you are trying to do, and we compliment you, Senator Specter, for those objectives, that is, to remove juveniles from adult jails and to remove status offenders from institutions. In most cases, we believe that is the proper thing to do. We do, on the other hand, believe that there are certain instances, particularly with status offenders, when some sort of secure facility should be available to protect them.

I point that out in my statement. I am not going to go into that in length because I believe both Father Ritter and Detective McGinniss will be talking about that later.

We believe that there are some unintended consequences to deinstitutionalization and that some of those unintended consequences have already arisen as a result of the Juvenile Justice and Delinquency Prevention Act. I think that the way these bills are constructed, they may exacerbate that problem.

We also believe that to do things in the way these bills propose is antifederalist, that it is an imposition upon the States on issues that are basically the province of the States under the 10th amendment, and that to impose the things that these bills impose on the States is contrary to our Federal scheme of Government. Furthermore, as Senator Hatch pointed out, the problem of institutionalization of status offenders and separation has been largely corrected. There certainly were many abuses before 1974, and over the years those abuses have been reduced.

Nevertheless, I think it is interesting to look briefly at some of the numbers and let me point out, Senator, that the numbers are very confusing. There are a lot of different ways of counting how many children there are in institutions, and the numbers do not compare very well. We have a system of monitoring the States. Unfortunately not all the States send in their monitoring reports on a consistent basis, so some of them may tell how many offenders are in institutions for 1 month, others for 6 months, others for 1 year, and it is very difficult to compare.

However, every 3 or 4 years, the Census Bureau does a count of children in custody, and that count does show some interesting things. First of all, regarding status offenders who are in secure institutions, the Census Bureau found that in 1977 there were 2,050 on a 1-day basis. That was only in jails, not in lockups. They found in 1979 that there was a reduction to 1,175 on a 1-day basis, and in 1983 that had been reduced to 1,100. Now, among other things, I find it interesting that in 4 years from 1979 to 1983, the 1-day count was only reduced by 75 children or less than 10 percent, even after the expenditure of many hundreds of millions of dollars on both the State and the Federal Government's part to do that.

It is also interesting to find that of the 1,100, only 70 were in the four States that do not participate in our program. In fact, one of those States, Wyoming, had none whatsoever in secure facilities, whereas in other States that are in the program and who are also in compliance, incidentally, had large numbers of status offenders in institutions. The worst offender, incidentally, was the State of Ohio—231 of the 1,100 in an institution on one given day.

Conversely, we found that the number of all juveniles in all secure facilities had risen substantially, from about 25,000 in 1977 to some 36,500 in 1983. Exactly what those numbers mean I do not know. We believe that one of the problems is that there has been a phenomenon known as relabeling, that is, that children who used to be held as status offenders are simply now being held as delinquents instead of status offenders, and, in fact, they are in essence the same children who were held before but under a different name.

There are a number of constitutional problems that I will point out in my testimony as we go along. We further believe that private actions of the sort set out in these bills are not the way to enforce mandates such as those set out in the two bills.

Finally, we notice that the Senate Judiciary Committee, in S. 2014 which it reported out recently, provided a safety valve, if you will, for status offenders allowing, under certain circumstances with a court order, a status offender to be held in an institution that would not be permitted under this bill. The Judiciary Committee, in other words, went one way 2 weeks ago. This bill goes the other way and we find this somewhat inconsistent.

One of the other impacts that is probably important to point out—and I have testified to you, Senator Specter, before on this issue—one of the things we believe deinstitutionalization has done has been perhaps to increase the number of children who are held in prisons. The American Correctional Association estimates that there are somewhere between 8,000 and 9,000 juveniles now held in adult prisons. That number is rising substantially. It has gone up by about 3,000 in the last year and a half.

We believe one of the reasons for that is the increased use of waiver and transfer which comes about certainly for a variety of reasons. One of those reasons, we think, is that there is a frustration on the part of prosecutors and judges as a result of deinstitutionalization because there are not sufficient places to put the juveniles when they are adjudicated delinquent.

One of the other unintended consequences of deinstitutionalization, as I mentioned at the outset, involves the problem of runaways, and what happens to them when they do get out on the street. I think that is a phenomenon that has changed substantially since 1974.

Everything we look at in my office, and we have looked at it very hard, indicates that there is a very high degree of sexual exploitation and abuse of runaway children. The number of runaways is not only increasing in sheer numbers, but it is also increasing more in percentages of children as the numbers of children has decreased over the last 7 or 8 years.

And although we do not advocate holding runaways in jails by any means, we believe that some sort of a mechanism is needed sometimes to hold runaways in secure facilities in order to facilitate their return home. Under S. 520 that would not be available since the bill is categorical in the way it prohibits those children from being held in secure detention. Again, I would leave that issue primarily to the next witnesses.

Let me turn to the constitutional issues. S. 520 and 522 provide for congressional protection by statute of constitutional rights of ju-

veniles that Congress itself has independently defined without reference to clear judicial establishment of such rights. It is far from clear that juveniles have a constitutional right, either to be held separately from adults or to be free of secure detention. Thus it is questionable whether Congress has sufficient authority under section 5 of the 14th amendment to enforce a constitutional right, that it, rather than the courts has articulated.

It is unclear, furthermore, whether Congress possesses under section 5 of the 14th amendment substantive power to articulate what rights are constitutional, and therefore, enforceable based upon mere legislative findings of fact or upon attempts to resolve competing values and to delineate substantive constitutional rights independent of the courts.

There is no ultimate persuasive case, in other words, for the constitutionality of S. 520 and S. 522. These bills would be an attempt to enforce a right, the existence of which as a matter of constitutional law is still speculative.

Mr. Chairman, the Supreme Court last week issued a decision in the case of *Schall* v. *Martin*, which is the preventive detention case involving a New York statute, and although the case is different certainly in what it resolves and what S. 520 and S. 522 try to do, there is some language which I think is particularly pertinent to the question being addressed today, and I would just like to read a couple of things from that case. First of all, on page 11 of the slip opinion, the majority opinion states as follows:

> The juvenile's countervailing interest in freedom from institutional restraints, even for the brief time involved here,

and that is under preventive detention,

> is undoubtedly substantial . . . but that interest must be qualified by the recognition that juveniles, unlike adults, are always in some form of custody. Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents and if parental control falters, the State must play its part as parens patriae. . . . In this respect, the juvenile's liberty interest may, in appropriate circumstances, be subordinated to the state's parens patriae interest in preserving and promoting the welfare of the child.
>
> The New York Court of Appeals in upholding the statute at issue here stressed at some length "the desirability of protecting the juvenile from his own folly." Society has a legitimate interest in protecting a juvenile from the consequences of his criminal activity, both from potential physical injury which may be suffered when a victim fights back or a policeman attempts to make an arrest and from the downward spiral of criminal activity into which peer pressure may leave the child. . . .
>
> Minority is a time and condition of life when a person may be most susceptible to influence and to psychological damage. . . Juveniles "often lack the experience, perspective and judgment to recognize and avoid choices that could be detrimental to them."

Nevertheless, Mr. Chairman, regarding *Schall* v. *Martin*, neither the Supreme Court nor any Federal court of appeals or State court has addressed the issue of whether holding nonoffenders including status offenders in an adult facility violates their rights under the due process clause.

There is one Federal court case from Oregon, *D.B.* v. *Tewksbury* which addressed the case, but as I point out in my testimony, it is a substantially different case. It is the only case we could find on the issue. It comes from one Federal district court. It has not been affirmed by the courts of appeal or, of course, by the Supreme Court.

Ours being a Government of limited powers, Congress should be reasonably secure in its basis for legislative acts before legislating. The single case, the *Tewksbury* case, decided at the district court level, cannot reasonably serve as a solid foundation upon which to base the broad constitutional rights embodied in S. 520 and 522 or the congressional authority to enforce them.

Mr. Chairman, in another case decided by the Supreme Court in 1983, the *Equal Employment Opportunity Commission* v. *Wyoming*, Chief Justice Burger in a dissent addressed, I believe, the issue that is at issue here very succinctly, and he was joined in that dissent by three other justices. He discussed the issue as to whether or not Congress could base its extension to the State of the Age Discrimination in Employment Act of 1967 on its enforcement authority under section 5 of the 14th amendment.

Pointing out that Congress had made no findings that the States were infringing on any right identified by the Supreme Court, the Chief Justice said as follows:

"Allowing Congress to protect constitutional rights statutorily that it has independently defined fundamentally alters our scheme of Government."

And it seems to me that that is precisely what we have at issue here: the Congress defining constitutional rights—those are rights that have not yet been defined by the Supreme Court—and then attempting to enforce them under section 5 of the 14th amendment.

The federalism issue I think can be addressed rather briefly, Mr. Chairman, although it is certainly a very important one. Our scheme of Government, both under the 10th amendment and under the concept of federalism leaves matters to the states which are not specifically given to the Federal Government in the Constitution.

Juvenile justice policy, detention policy and things like that are certainly under the province of the State and not under the Federal Government. That does not mean, of course, that the Federal Government cannot be concerned about them, but it does not mean that the Federal Government can legitimately enforce under that concept of federalism, certain things that it thinks are proper against the States.

Again, I think that the *Schall* v. *Martin* case fortifies that position in terms of juvenile justice policy. In terms of litigation as a way of enforcing these rights, we at the Justice Department oppose the broad right to sue under cases like this, particularly where State and local officials are concerned.

We think that it is a bad way of solving problems. It certainly does not help the relationship between State and Federal Governments. It is expensive. It is costly and time consuming to State and local officials particularly, and we believe that such lawsuits should only be authorized as a matter of absolute last resort. In this case, we do not think we have gotten to the last resort yet.

The Juvenile Justice and Delinquency Prevention Act is still working. We see an increasing decrease both in the number of juveniles that are held in adult jails and status offenders that are held in institutions. We think that in continuing what we have been doing over the last several years, we will be able to improve that.

That is not to say that we are ever going to completely eradicate the problem. I am not sure that we would no matter what we do because I believe these problems are the type that people, if they want to, can usually find a way around. For examples, we have noticed this is the case with the relabeling problem of holding status offenders as delinquents instead of status offenders. That is certainly one of the ways that people have gotten around that problem, and they will continue to do so.

One other analogy regarding lawsuits which I think is a valuable point to raise, Mr. Chairman, is the analogy to section 1983 suits, particularly as I've looked at them—those involving the schools.

As you know, under the cases of *Wood* v. *Strickland* and *Gotz* v. *Lopez*, the Supreme Court has allowed school administrators and teachers to be sued for violations of due process rights under section 1983.

You had a hearing, I believe, in the Labor Committee in March which addressed that issue. One of the people that testified was a man named Luffler, who is the Assistant Dean of the School of Education at the University of Wisconsin, who has done a number of studies and some work on 1983 suits as they regard the schools, and he found that the problem was not as pervasive with 1983 suits as people thought it was.

In other words, he talked to a lot of teachers and school administrators and did a survey and found that most of them thought there were a great many more suits than there actually were.

But he also found that the impact of those suits was that, primarily because teachers and administrators thought they might be sued, they avoided the risks of getting into a situation in which they thought they could be sued, even though they didn't really understand the law. The result was that in a situation in which a student should have been disciplined rather than disciplining the student with the risk of getting sued, the teachers and administrators simply turned the other way.

Now, I am not sure whether that would be a problem if these bills were enacted, but I think it is worth raising the issue. A particular case comes to mind which a friend, who is a juvenile judge in Miami, told me about.

It involved the case of a 13-year-old girl who had run away from home about 15 times. She was a chronic runaway and she said, "If you do anything to me other than hold me in secure detention, I am going to run away again."

The girl was also a diabetic and she needed insulin in order to survive. Now, my friend the judge said that because of this situation he willingly broke the Florida law and ordered her held in secure detention because if he did not do so she would die.

Now, the question I have is, If these bills were statutes, if that judge or whoever was responsible for putting that girl in secure detention knew that he might be sued, would he still be willing to break the law or risk having a lawsuit brought against him, I should say, to save that girl's life?

I do not know the answer to that question but there are situations like that which occur every day across this country, and I think that if you take the strict approach which these bills do, you are going to run into some of those sorts of problems.

That, I guess, summarizes the testimony that I developed. As I say, there are some other issues in the testimony that I have not addressed. I would be pleased to answer any questions you may have.

[Material submitted for the record follows:]

## Prepared Statement of Alfred S. Regnery

Thank you very much, Mr. Chairman, for inviting the Department of Justice to testify this afternoon on S. 520 and S. 522. As the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), I am here to present the views of the Department of Justice.

The Department of Justice opposes the enactment of these bills. Our views are based on several factors, both substantive and procedural.

S. 520 and S. 522 would amend Chapter 21, 42 U.S.C., to provide that certain actions pertaining to juveniles constitute violations of civil rights. The purpose of these two bills parallels concepts contained in the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. Under that Act, funds are provided to state and local governments for programs designed, among other things, to provide for the deinstitutionalization of status offenders and for the separation of juveniles from adults in secure detention facilities. States participating in the Act's formula grant program are required to take specific steps toward those goals.

S. 520 would establish that the placement of juvenile non-offenders, including status offenders, in secure detention, treatment, or correctional facilities, is a violation of the constitutional rights of such juveniles. S. 522 declares that the confinement of any person under eighteen in any adult jail or lockup is, with certain limited exceptions to be established by federal regulation, a violation of the constitutional rights of juveniles. Both bills would be enforceable, through civil actions for damages and equitable relief, by private parties and would have the effect of assigning personal liability to the public official responsible for the violation of such rights.

Although we generally support the goals of deinstitutionalization of status offenders and the separation of adults and non-criminal juveniles in jails, the problems which S. 520 and S. 522 seek to address have been vastly reduced over the past decade without such legislation. To attempt to deal

with these problems with the unconditional and inflexible approach which S. 520 and S. 522 propose, would be an over-reaction in light of the relative insignificance of the problem and would result in impractical and unintended consequences. Indeed, such consequences are presently a problem, even with the current regulations which permit a degree of flexibility. In recent testimony before the Juvenile Justice Subcommittee, I discussed some of those problems and consequences as they developed from the deinstitutionalization requirement of the current JJDP Act and which are clearly applicable to S. 520.

The JJDP Act places major emphasis on deinstitutionalization, under the assumption that it will reduce criminality among juveniles. However, a recent study by the American Justice Institute, done at our request, produced some startling findings. It showed that comparisons of deinstitutionalized status offenders and institutionalized status offenders generally show no differences in recidivism. Of the fourteen programs in which recidivism rates could be compared, no differences were found in eight; in three, the deinstitutionalized status offenders did better, and in three, they did worse. Despite many attempts to measure the impact of deinstitutionalization on criminality, in other words, there is virtually no empirical evidence to indicate that there is a relationship.

Although hard data is scanty and difficult to find, in at least one area it appears that the deinstitutionalization requirement may have done more harm than good. That area involves runaway behavior — one of the most frequently committed of the status offenses.

In many jurisdictions, deinstitutionalization has encouraged and even forced authorities to neglect runaway and homeless children. In this country's toughest urban centers, deinstitutionalization has meant, not transferring youths from reform schools to caring environments, but releasing them to the exploitation of the street.

S. 520 would make it virtually impossible for state and local authorities to detain status offenders in secure facilities. In the case of

runaways -- particularly those who are chronic runaways -- that prohibition is too extreme. In some situations, secure settings -- not jails -- are necessary to protect these children from an environment they cannot control and often are unable to resist. The costs of a blanket policy prohibiting the protective holding of those children are far greater than any benefits which might flow from the legislation.

A study recently conducted of runaway girls in Wisconsin found that 54% needed to steal in order to survive and 70% had to resort to prostitution. Many runaways are arrested and enter the judicial system no longer as status offenders, but as criminal offenders -- often for crimes that they were virtually forced to commit in order to survive. In many cases by providing services to them at an early stage, the law enforcement system could help these children return home, thereby preventing subsequent criminality. Yet the effect of the deinstitutionalization movement on law enforcement has been to remove its services, in many cases, from status offenders. As The Wall Street Journal said in a recent editorial on the subject, "...the police don't want to deal with runaways at all, even though many kids would be quite willing to stay put in custody and go home again."

The effects of S. 522 requirements for removal of juveniles from jails and lockups for adults would be different from, but no less serious than, those produced by the S. 520 because of the extreme financial burden it would thrust on state and local governments in comparison to the small numbers of people it would benefit. S. 522 would prohibit any person under the age of eighteen from being detained or confined in any jail or lockup for adults. This provision ignores the fact that each state defines who is a juvenile in terms of age, and in many states, the seriousness of the presenting offense. S. 522 would, for example, prohibit the use of adult jails or lockups for sixteen-year-olds in New York -- a state which holds such youth to be adults under the exclusive jurisdiction of the criminal courts. Further, the JJDP Act requirement for removal of juveniles from

adult jails and lockups excludes juveniles who have been waived or transferred to the criminal justice system or for whom the criminal court has otherwise assumed jurisdiction. To apply the prohibition across the board would not only disrupt state law and practice, it would force the placement of young adults (sixteen and seventeen year olds in many states) and juveniles who have committed serious and violent crimes and are under criminal court jurisdiction, into juvenile detention and correctional facilities. There, juvenile delinquent offenders would be their prey. Also, it should be noted that the resulting need by S. 522 to place sixteen- and seventeen-year-old adults in juvenile facilities with delinquents would have the ironic effect of violating the existing JJDP Act separations requirements and would result in the states being declared ineligible for participation in the JJDP Act formula grant program.

By participating in the JJDP Act formula grant program and submitting a plan for the removal of juveniles from adult jails and lockups, the states have committed themselves to an orderly, planned, and good faith effort to achieve the removal of juveniles from adult jails and lockups. Because of the relatively small amount of federal money involved in the juvenile justice program, the states have not begun to comply with the jail removal requirement because of federal money but because they believe it is the right thing to do. And there is every reason to believe they will continue their jail removal efforts without the coercive mandates of S. 522.

Perhaps of greater significance to the discussion of deinstitutionalization and jail removal and the provisions of S. 520 and S. 522 is the fact that these objectives have been largely accomplished, at least to the extent that juvenile status offenders are now only rarely held in secure detention facilities. Forty-six states and the District of Columbia now participate in the JJDP Act by, among other things, deinstitutionalizing their status offenders in order to qualify for federal funding. Each of these states has submitted a plan and submits annual reports to my office containing a review of its progress to achieve deinstitutionalization. Our information

shows that the number of status offenders and non-offenders held in secure facilities has been reduced by 88.5% over the past five to seven years. Similarly, the number of juvenile delinquents and non-offenders, including status offenders, held in regular contact with incarcerated adults has decreased 71.8% since 1979.

Our data show that the number of status offenders in secure facilities on any given day has been almost cut in half since 1977. According to figures from the Bureau of the Census, there were 2050 status offenders in secure facilities on one day in 1977, 1175 on one day in 1979, and only 1100 on one day in 1983.

It is significant to note that, while the number of status offenders in secure facilities has declined drastically, the total number of incarcerated juveniles rose by more than 10,000 during the same period -- from 25,676 on a given day in 1977 to 36,545 in 1983. These figures reveal two important facts. First, the number of status offenders in detention is very small in relation to the total number of incarcerated juveniles. Second, with all emphasis on deinstitutionalization of status offenders and the hundreds of millions of dollars devoted to that purpose by all levels of government, the actual number of juveniles in secure detention has increased -- partly because of "relabeling." Additionally, surveys in individual jurisdictions consistently show that a large percentage of delinquents in secure detention have previously been held for status offenses, and that a large percentage of status offenders have previously been held for delinquent acts. If the objective of the bills under discussion today is to reduce the rate of juvenile incarceration, the experience of the past six years strongly suggests that they are unlikely to succeed.

In summary, we believe that state and local efforts toward deinstitutionalization and jail removal will continue without federal legislative mandate and will be able to accomplish more without the unyielding requirements of S. 520 and S. 522, which do not recognize that each state operates under a different set of conditions and circumstances.

In addition to the problems I have just mentioned, Mr. Chairman, S. 520 and S. 522 have a number of serious constitutional shortcomings. Both bills purport to be based on authority granted to Congress by the Fourteenth Amendment. Both bills declare that "the constitutional rights of juveniles" guaranteed by that Amendment "shall be enforced" by prohibiting the detention of juveniles held for noncriminal offenses. In essence, S. 520 and S. 522 provide for congressional protection, by statute, of constitutional rights of juveniles that Congress itself has independently defined, without reference to clear judicial establishment of such rights. To do so is clearly contrary to our scheme of government.

It is far from clear that juveniles have a constitutional right either to be held separately from adults or to be free of secure detention. That is, there is a serious question, from a constitutional perspective, whether a state's decision to hold such juvenile offenders in the same facility as adults or in a secure facility violates whatever due process rights juveniles have under the Fourteenth Amendment. In the absence of such a right, it is questionable whether Congress has sufficient authority under Section 5 of the Fourteenth Amendment to enforce a constitutional right that it, rather than the courts, has articulated -- i.e., to regulate the states' detention of juveniles in order to protect a juvenile's presumed, though yet undetermined, civil rights.

The latitude which Congress has in modifying or expanding Fourteenth Amendment rights by statute remains in a state of flux. It is unclear whether Congress possesses, under Section 5 of the Fourteenth Amendment, substantive power to articulate what rights are constitutional (and therefore enforceable) based upon mere legislative findings of fact or upon attempts to resolve competing values and to delineate substantive constitutional rights, independent of the courts. Some cases suggest that Congress may reach beyond its remedial powers and make the value choices typically involved in judicial "strict scrutiny" interpretations of Fourteenth Amendment rights; however, other, more recent cases, have either imposed

or implied the existence of limits on such powers. S. 520 and S. 522 not only impinge on states' rights to decide state questions, but also risk a congressional undercutting of the Court's traditional role in delineating the content of constitutional rights. In short, there is no ultimately persuasive case for the constitutionality of S. 520 and S. 522. These bills would be an attempt to enforce a right, the existence of which, as a matter of constitutional law, is still speculative.

Though the application of due process to juveniles has been increasingly recognized by the courts,[1] what is actually required to assure fundamental fairness, and Congress's actual ability to articulate what rights are constitutional and therefore enforceable, are far from definite. Neither the Supreme Court nor any federal court of appeals or state court has addressed the issue of whether holding non-offenders, including status offenders, in an adult facility violates their rights under the due process clause. There is one federal district court case we have found which deals with this question. D.B. v. Tewksbury, 545 F.Supp. 896 (D. Ore. 1982). It is important to note that the Tewksbury court based its opinion, for the most part, on its admitted use of pre-adjudication detention for the purpose of "punishment" a clear violation of the due process clause. The court acknowledged that not every disability imposed in pre-adjudication detention of juveniles amounted to "punishment" and that special conditions within the jail had to exist for detention to be tantamount to "punishment" under the Fourteenth Amendment. The basis upon which the court determined that detention in this instance was indeed punishment -- including the extraordinary conditions within the jail in question -- clearly limit the application of this case. Furthermore, the court's statement that any confinement in jails of juveniles accused of committing crimes violates their Fourteenth Amendment rights is mere dicta. Ours is a government of limited powers and Congress should be reasonably secure in its basis for legislative acts before legislating. This single case, decided at the district

[1] In re Gault, 387 U.S. 1 (1967) and In re Winship, 397 U.S. 358 (1970).

court level, cannot reasonably serve as a solid foundation upon which to base the broad constitutional rights embodied in S. 520 and S. 522 or the congressional authority to enforce them.

Besides the important question of Congress' authority to enact these bills, S. 520 and S. 522 are based on the erroneous assumption that Congress is better equipped to make decisions involving juvenile detention (a state and local concern) than are the state legislatures and state courts. The issue of juvenile detention has traditionally been addressed by the state and local jurisdictions, and to attempt to force states to comply with federal directives in matters which are primarily within the purview of the states does violence to the concept of federalism. These bill would interfere with, and in some instances, supplant state and local policy decisions which are protected under the Tenth Amendment.

Juvenile justice policy, state prison policy and, in fact, state justice policy are matters about which the federal government, to be sure, may be concerned, but which are far better handled in the states themselves. The Supreme Court acknowledged this fact and recognized the limits which the Tenth Amendment places on federal regulation of traditional state governmental functions in National League of Cities v. Usery, 426 U.S. 833 (1976). The presumption that the federal government has superior capabilities in regulating state and local jurisdictions on state and local functions — the concept upon which S. 520 and S. 522 is based — is contrary to the position which the courts have taken and are likely to uphold in the event the states challenge the constitutionality of these bills under the Tenth and Fourteenth Amendments.

Even if one were to apply a balancing test to weigh the utility of S. 520 and S. 522 — whether the federal interest in regulating juvenile detention is demonstrably greater than the states' interest — it is clear that the bills interfere substantially with the states' administration of their own laws. For example, to provide that the mandate may be enforced by litigants in the judicial system is yet a further intrusion into state policy by

the federal government, not to mention a substantial fiscal and administrative burden on many states. We fail to see how the federal interest in protecting an unresolved constitutional right of juveniles would be "demonstrably greater" than the states' interest in carrying out law enforcement policies as mandated by the state legislatures.

Finally, Mr. Chairman, it must be noted that the federal government itself has not complied with the JJDP Act. Because it has not done so, as far as deinstitutionalization of non-offenders, including status offenders, and separation of juveniles and adults in jails is concerned, we find it totally inappropriate for it to mandate that the states do what the federal government is unable or unwilling to do. Specifically, in a GAO report dated March 22, 1983, entitled Improved Federal Efforts Needed to Change Juvenile Detention Practices, GAO found several federal agencies in noncompliance with the Act, and inconsistent with the mandates established by the JJDP Act. In addition, GAO found that, of the federal agencies examined, only one could completely account for the juveniles they had taken into custody. In addition, none could provide GAO with information on the number of juveniles detained or on lengths of stay. The GAO found that the Immigration and Naturalization Service, the National Park Service, the U.S. Park Police, the U.S. Marshals Service, and the Bureau of Indian Affairs detained status offenders and mixed juveniles and adults in jails from time to time. For the Congress to mandate that the states do what the federal government cannot do, under the penalty of being sued, but without providing such remedies against those abused by the federal government, strikes us as, at best, inconsistent, and at worst hypocritical.

The JJDP Act does provide some flexibility to the states in the areas mandated by S. 520 and S. 522. Not only do we think such flexibility is entirely appropriate, we also believe that the exceptions may not be broad enough. Accordingly, we note that the Senate Judiciary Committee, on May 10th, in reporting the reauthorization of the JJDP Act to the full

Senate (S. 2014), included an amendment which permits an additional exception to the secure detention provisions without bringing the state into noncompliance. That amendment to Section 223 (a)(12)(A) states as follows:

> "(ii) juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders shall not be placed in secure detention facilities or secure correctional facilities except that the short-term emergency placement in a public or private secure juvenile residential facility of certain of these juveniles may be ordered by the court if the court finds based on clear and convincing evidence that: (a) the physical safety of the juvenile is in serious danger; and (b) there is no less restrictive alternative placement available which would adequately safeguard the welfare of the juvenile, provided that a judicial determination is held within 24 hours and that the juvenile is either released or diverted to a non-secure community-based alternative within 5 calendar days;"

That amendment would have the effect of allowing states to hold status offenders for short periods of time in secure detention facilities, pursuant to a court order, to protect the physical safety of the status offender. We believe that such an amendment is wholly appropriate and, in fact, a necessary addition to the mandates of the JJDP Act. We would also note, however, that S. 520 takes a much more extreme and wholly inconsistent view which permits none of the flexibility permitted by the proposed amendment. If, in fact, the Judiciary Committee recognized the need to amend the JJDP Act, as it apparently did, we fail to see how it could also find a need to strengthen the provisions of the Act by S. 520.

Because of each of these concerns, Mr. Chairman, and particularly because of these concerns taken in the aggregate, we urge the Committee to reject these bills.

Senator HATCH. Thank you, Mr. Regnery. You mentioned in your statement that deinstitutionalization has had the effect of encouraging police officers to neglect runaway and homeless children.

In your opinion, why has that occurred?

Mr. REGNERY. Well, from what I understand in talking to many law enforcement officers, it is primarily because they really do not have any ultimate remedy and because, in many cases, what they do is ineffective. Particularly, I have had policemen tell me, for example, that they will spend 2 or 3 hours picking up a runaway who obviously needs help, a child who would be very confused and who is either being or has been exploited. The police will spend 3 or 4 hours doing the paperwork and other preliminary tasks that are necessary, take the child to a shelter which is not secure, only to have the child return to the street in 5 or 10 minutes.

After awhile they simply say, "What's the point? Why should I spend 3 or 4 hours of my time when I could be doing something perhaps more productive, if the result is going to be that the child is put back on the street?"

Now, I have never met a policeman who wants to put those children in jail, but on the other hand, they do want some kind of a place where they can have that child in a situation where the child will not be able to leave.

Another example is a case of the sheriff who was in my office 3 or 4 weeks ago, who was from a county in Georgia which is on the throughway to Florida, and he told me that consistently they used to pick up 14- and 15-year-old girls hitchhiking to Florida.

They would bring them into the sheriff's office, question them, find out who they were, and call their parents. After, the parents had not seen them for several days and were desperate to find out where they were. They would say, "Please hold the child. I will be down to get them."

The sheriff's reaction had to be, "I am sorry. All we can do is give the child a chair in the front of the sheriff's office. The child may still be there when you come to get her, she may not be, but there is nothing we can do about it."

After awhile the police stopped picking up those children and they'd go on to Florida as runaways. I guess we all know what happens to those children in many, many cases when they get to Florida, or wherever they happen to be going, and I think Father Ritter can tell you some of those stories when he testifies.

Senator HATCH. Do you feel that the problems associated with institutionalization of status offenders are being addressed at the present time?

Mr. REGNERY. Yes; I think quite adequately. I believe that it is a problem that is never going to be completely solved.

Senator HATCH. Tell us how they are being addressed right now.

Mr. REGNERY. Well, about 60 percent of our money, or $40 million a year more or less, goes to States who agree to deinstitutionalize status offenders.

As you mentioned, 46 States participate in that program. The money that we supply to them is not nearly enough to pay for what they have to do to deinstitutionalize and to remove children from jails. This is an indication to me that they have largely made

a commitment to do this even without our money. Nevertheless, they obviously like to get our money.

As we have looked at the problem of deinstitutionalization, we find that over the last 6 or 7 years there has been a decrease by about 90 percent in the number of juveniles that are status offenders who are institutionalized.

We admit that there still are some status offenders who are institutionalized, some in the States that do not participate and others in States that do. Our statute does not, incidentally, require that every single one be deinstitutionalized. There are certain restrictions or by regulation we have made some exceptions.

Senator HATCH. How about the problems associated with the housing of both juveniles and adults in the same jails? Is that problem being addressed under the Juvenile Justice and Delinquency Protection Act?

Mr. REGNERY. Yes; it is being addressed. The statute really takes two different tracks on that. The first is what is called separation which means that they may not be held in the same cell or they have to be separated by sight and sound, as it is defined.

The second part is that they have to actually be removed from the facility. The statute does not say that they have to be in separate buildings, incidentally, as long as they are in a completely separate facility.

Now, the second part of that does not become effective until next year. As we have surveyed the States, we have found that they have made substantial progress in removal. In separation, the States are mostly in compliance. I do not have the figures on the top of my head as to how many are in total compliance but a good many of them are. They keep reducing the number institutionalized every year.

Nevertheless, it is an expensive proposition, particularly where a new detention center, for example, has to be built to comply with the statute, and I believe you may have some figures on those. We can get them for you otherwise.

But to answer your question, yes, substantial progress is being made. As with a lot of problems in our society, I guess it has not completely gone away.

Senator HATCH. How many States now participate in the Juvenile Justice and Delinquency Prevention Act?

Mr. REGNERY. Forty-six.

Senator HATCH. You mentioned the federalism issue. How do you see these bills as violative of the concept of federalism?

Mr. REGNERY. Well, as I pointed out in both my prepared testimony and my oral testimony, I believe that placing mandates upon the States for something which Congress finds to be a problem which is a State issue, and then providing a remedy in Federal court under Federal law against the States violates federalism.

Under the federalist system, as far as juvenile justice policy is concerned, the States are the entities which pass juvenile statutes and which determine how juvenile detention will work.

Each State is different. Each State has a different set of problems in terms of status offenders. Obviously New York or Florida has a very different situation from that of Wyoming or Utah.

The States as they address those problems on their own I think, are more able to do a more adequate job than they are when being directed by Washington.

Senator HATCH. I see. Will you please explain further your statement that these bills may violate the 10th amendment to the Constitution?

Mr. REGNERY. Yes. the 10th amendment simply says that powers that are not reserved to the Federal Government by the Constitution remain in the States, and I think clearly the Constitution neither discusses juvenile justice policy, nor detention policy, nor any of the other things addressed by S. 520 and S. 522.

The constitutional rights which the bills discussed are vague. They are not certainly defined by courts, and therefore, they are not really constitutional issues as such. In fact, there is a lot of argument as to just what the state of those constitutional issues is.

Therefore, it seems to me that under the 10th amendment they certainly do not come under the Federal mandate.

Senator HATCH. In the recent case of *Schall* v. *Martin*, the U.S. Supreme Court held as constitutional a New York State statute which authorizes pretrial detention based on a finding that there is serious risk that the juvenile may, before the return date, commit an act which, if committed by an adult, would constitute a crime.

Now, in reaching its decision, the court observed that the State has, as you stated, a parens patriae interest in preserving and promoting the welfare of a child and the children by definition are not assumed to have the capacity to take care of themselves.

Do you personally feel that the Supreme Court's reasoning in *Schall* is applicable to the bills under consideration today?

Mr. REGNERY. Yes; I think it is. Obviously, the case is not on the issue of status offender detention or holding status offenders in secure facilities, but if I were going to argue a constitutional case in the Supreme Court, I would certainly use the reasoning and the language which the Supreme Court used in the *Schall* case to convince the court of my case.

Senator HATCH. Do you feel that under section 5 of the 14th amendment Congress possesses the power to say what are and what are not the constitutional rights based solely upon legislative findings of fact?

Mr. REGNERY. It is my understanding that is an area which is in a great deal of flux, Mr. Chairman, and which, in fact, has not been clearly defined.

Senator HATCH. Do you feel that, based on your experience and legal research, status offenders have a constitutional right to be totally free from detention in a secure facility?

Mr. REGNERY. No; I do not believe they do.

Senator HATCH. Senator Specter.

Senator SPECTER. Thank you very much, Mr. Chairman.

Mr. Regnery, you have quoted a Wisconsin study in your testimony saying that 70 percent had to resort to prostitution. We have searched that document and find at page 29 a statistic on 17 percent, stating, "In addition, 17 percent found it necessary to exchange sexual contacts for food and a place to stay." I wonder if that is a transposition or error in your statistic which you cite at page 3 of your prepared testimony; the statistic 70 percent had to

resort to prostitution on runaway girls seemed to be very high, and when we checked, we found 17 percent.

Mr. REGNERY. I am not sure. That may be a mistake in my testimony, typographical error. I will be glad to check for you, Senator.

[Subsequent to the hearing, the following was received for the record:]

The figure cited is a typographical error. The testimony on page 3, paragraph 3, of Mr. Regnery's formal statement submitted to the subcommittee should read: "A study recently conducted of runaway girls in Wisconsin found that 54 percent needed to steal in order to survive and 17 percent had to resort to prostitution.

Senator SPECTER. I wish you would and let us know about that. You testify that there are no status offenders in secure detention in Wyoming which is an assertion which I wonder about in light of the testimony which has been provided today by the National Coalition for Jail Reform.

Mr. REGNERY. Senator, that was on the one day that they counted. I mean, that is a 1-day count.

Senator SPECTER. Well, I did not understand that, but I do not know that a 1-day count has a whole lot of significance under any circumstance, but Wyoming, one of the States that does not participate in the Juvenile Justice and Delinquency Prevention Act, the report of their Governor's Committee on Troubled Youth estimated roughly that 4,159 of the 6,420 juveniles arrested in 1982 were held in adult jails.

The question I have for you, Mr. Regnery, about Wyoming and about what this subcommittee found in extensive hearings on Oklahoma where there was a mixture of adults and juvenile offenses, given the situation in a State like Wyoming and a basis for inferring that other nonparticipating States are probably about the same which is very bad, why do you think that that is an area that the Federal Government should not concern itself?

Mr. REGNERY. Well, first of all, regarding the nonparticipating States, the 1-day count that I am referring to involves status offenders in secure detention. What the Census Bureau found was that North Dakota had one on that day. South Dakota had 44. Nevada had 25 and Wyoming had none. Now, that only does speak to that one day. I admit that.

Senator SPECTER. All right. Even so, those statistics are not very good.

Mr. REGNERY. No, but they are as good as or better than a lot of States that do participate. I guess that is the point.

Senator SPECTER. Well, that raises another question. We have got a whole series of questions now which we are leaving in a stream. The question is the one I started off asking you about Wyoming, mixing juveniles and adults who are charged with offenses, a second issue as to how many status offenders are in secure detention on a 1-day basis, and the figures you cite sound to me like there are too many.

Your response, then, is well, they are no worse off than the States which now are under the program.

Mr. REGNERY. Some of the States that is.

Senator SPECTER. Some of the States. The Office of Juvenile Justice and Delinquency Prevention, and when you talk about, here, the relative insignificance of the problem of status offenders being

in detention, the statistics which you have provided are that there are 22,833 status offenders who are held in secure detention.

I am at a loss to see how you can say that that is an insignificant problem.

Mr. REGNERY. Well, I was referring to the 1-day count. Again, I use this in order to have a consistent set of numbers. I spoke this morning with Steve Schlesinger, who is head of BJS, about this before I came up here to find out how those counts are usually done. The count of 480,000 people in prison, for example, is a 1-day count. The number of people in jails is a 1-day count.

It may not be the best way of doing things, but it is the way consistently that other people use the numbers. As I said, we have gone through the numbers many times with people in our office, and there are different ways of measuring. The numbers may not make any difference. I do not know because they vary from one way to another, but it is very difficult to compare them because of the statistics.

Senator SPECTER. OK. They are the best we have. But how can 22,000 status offenders be considered to be insignificant?

Mr. REGNERY. Well, what does the 22,000 mean? 22,000 status offenders, in the course of a year?

Senator SPECTER. You tell me. You are the Director of the Office of Juvenile Justice and Delinquency Programs.

Mr. REGNERY. Did I use the number? I am just asking you for a definition of the 22,000. What is that number?

Senator SPECTER. That is your figure.

Mr. REGNERY. Not in my testimony it is not, is it?

Senator SPECTER. It is a figure that you provided to this committee in budget submissions.

Mr. REGNERY. OK. Can you refresh my memory what the 22,000 refers to?

Senator SPECTER. It refers to status offenders who are in jail.

Mr. REGNERY. Over the course of a year?

Senator SPECTER. I do not know. You did not say.

Mr. REGNERY. That is the problem with these numbers. If it is over the course of a year, it is one thing. If it is on a 1-day count, it is something different.

Senator SPECTER. Well, in the budget submission, you also used a figure leaving 35,000 in inappropriate confinement in participating States. Would you say that 35,000 or 22,000 is an insignificant figure?

Mr. REGNERY. I guess it depends on what it refers to. If it is over a period of a year, again, it would depend if that includes anybody who crossed the portal for 5 minutes, or if they were held there for 24 hours or more, or if they were held for a week or more. I guess you have to define what that means.

I know those figures. Your staff called the office about that this morning, and apparently the budget office prepared them.

Senator SPECTER. Let us take the minimum amount. 35,000 held in secure detention for any period of time, however slight.

Mr. REGNERY. No, that is certainly not an insignificant figure.

Senator SPECTER. OK. I do not think it is insignificant either.

Mr. REGNERY. To clarify one point, Senator, in my statement I said that there were 1,100 status offenders in secure institutions at

one given time as opposed to 35,000 juveniles in all secure detention, and I say that the relative difference between those two numbers shows that the status offender problem is relatively insignificant. It is still a lot of kids, sure.

Senator SPECTER. Mr. Regnery, we do not have a great deal of time. Chairman Hatch has to leave soon. I have got to preside at 4 o'clock. We have a lot of witnesses. There are just a couple of points I want to cover as best we can.

The report of the General Accounting Office picking out five States which are covered, Oregon, Virginia, Massachusetts, New Hampshire, and North Carolina, and in just summary form, they say that the States visited proved that there are major detention problems which exist, and then they go one by one.

Oregon, pointing out the lockups which did not separate juveniles and adults and what they found specifically; Virginia, certified jails did not provide adequate separation; Massachusetts, local law enforcement officials told us that juveniles are at times incarcerated in adult cells; New Hampshire, the 1980 monitoring report for New Hampshire—this is a fairly recent report, just a little over a year old—showed New Hampshire's total separation was not achieved. It goes on. And North Carolina, the State recently reported that 51 juveniles were held in noncertified jails from July 1980 through June 1981, and one of two noncertified jails we visited detained juveniles.

When I take a look at what is happening in States that are under OJJDP and take a look at what is happening in States which are not, it seems to me that we do have a major problem in this area.

But I realize it is difficult for local law enforcement officials to be subjected to being sued, and I was sued dozens of times as district attorney of Philadelphia. It is one of the institutional hazards of being a public official.

But where we have a problem of this magnitude and you agree with the objectives which S. 520 and S. 522 seek to obtain, my question to you is how can we really turn our back on it and not really take some action, being in a key spot?

I am chairman of the Juvenile Justice Subcommittee. Senator Hatch is chairman of the Constitutional Law Subcommittee. You are Director of the Office of Juvenile Justice and Delinquency Prevention. If the people of the United States and the children who are being abused in these ways cannot look to us for leadership in a tough position, whether somebody is going to be sued or not, who is going to take the lead on trying to solve this kind of a problem?

Mr. REGNERY. Well, there are privately a variety of ways of solving it. As I said, we have made a lot of headway in the last 10 years. These are problems that you do not solve overnight unless you are willing to give the States a great deal of money to do it, because it is an expensive proposition.

But I do not think that passing a statute which is of questionable constitutional status is going to really solve the problem.

Senator SPECTER. Suppose it is not of questionable constitutional status.

Mr. REGNERY. Well, that is a very different question. I guess if you can come up with a statute that is not going to be unconstitu-

tional, then I would be glad to come back and talk about that, but I do not think the magnitude of the problem justifies doing something that is unconstitutional.

Senator SPECTER. I think Regnery, Hatch, and Specter can come up with one that is not unconstitutional. I do not think Specter has come up with one that is unconstitutional. Let us explore that for just a minute.

The 14th amendment, section 1, provides that all persons born or naturalized in the United States are subject to the jurisdiction thereof or citizens of the United States of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of the law.

Even with the consideration of the first amendment, probably nothing ever written has had a more profound effect on the lives of people than those words. OK. Section 5 says:

"The Congress shall have power to enforce by appropriate legislation the provisions of this article." Now, given that language, "The Congress shall have the power to enforce by appropriate legislation the provisions of this article," how can you say that it is not within the purview of the Congress, the Senate and the House, to define what constitutes a violation of due process of law or equal protection of the law?

Mr. REGNERY. Well, I can only repeat what the courts have said, and as I have looked at the constitutional law, I find that the courts have said that section 5, in fact, does not give—at least it does not clearly give—Congress that power.

As I pointed out with the comment from Chief Justice Burger, that the Congress does not have the authority to define constitutional rights under section 5 and then find ways of enforcing it. Only the Court has that power.

Senator SPECTER. That is the opinion you cited where he was in dissent?

Mr. REGNERY. Yes.

Senator SPECTER. Any authority where he spoke for the court?

Mr. REGNERY. Yes, there is a great deal of authority on that issue. I do not have all of it in front of me.

Senator SPECTER. I am speaking about where Justice Burger, Chief Justice Burger, spoke for the Court.

Mr. REGNERY. I do not know if there is or not. There may be.

Senator SPECTER. Well, we all disagree with the Supreme Court from time to time, and there is substantial authority to the contrary, and I believe if you pick your way through the cases, there is a convincing line that Congress does have the power to enforce the constitutional provisions.

My staff, always to the rescue, hands me a paper which contains the language of a best summary made by Justice Rehnquist in *Fitzpatrick* v. *Bitzker*. Are you familiar with that case, Mr. Regnery, because I am not?

Mr. REGNERY. No; I am not.

Senator SPECTER. One of the things that I do not have a chance to do is stay familiar with the cases any more, but there is lan-

guage here from Justice Rehnquist. "We think the Congress may in determining what is 'appropriate legislation' for purposes of enforcing the provisions of the 14th amendment provide for private suits against States or State officials which are constitutionally impermissible in other contexts."

Well, Mr. Regnery, what I would appreciate you would do is take a look at the statistics and the facts on these lines. If you could come back to Senator Hatch's subcommittee or my subcommittee as to what the facts are. I think if we came to some agreement on the facts we would probably see eye to eye on how we should structure the remedies.

I have tried to find answers, as best I can, and you are in the best position being the Director of the Office of Juvenile Justice and Delinquency Prevention, and I appreciate the hard work you have put into that position, but I would like to really know what is factual here.

How many juveniles are kept in secure detention where they are so-called status offenders? I would appreciate it if you would take a look at the testimony of Lucy Briggs, the Acting Commissioner for Children and Youth and Families at HHS when she testified that runaways can be effectively handled in nonsecure setups.

Also I would appreciate it if you take a look at the OJJDP regulation which allows police to detain runaways for 24 hours pending court action. We do not have time to explore all the questions which are involved here today to try to come to some basic understanding as to what the facts are regarding how many status offenders are held in jails, how many juveniles who are charged with offenses are mixed with adults and how effective current procedures are in dealing with runaways and with the powers of the police. This is something we will be exploring more as we proceed on the general oversight function which our subcommittee and your Department have.

Mr. REGNERY. I can try to do that, Senator. I can tell you that those numbers are very hard to obtain. We work on those all the time, and we rely for the most part on States supplying numbers to us which they gather. Many times I do not think those numbers are very good.

They get them from the local sheriff and sometimes there is an incentive for them to fudge the numbers one way or the other, and they report them in a lot of different ways, and our regulations or, I guess, it is OMB's regulations require that we rely on the numbers we get from the States.

So it really does not enhance our knowledge by having to rely on those figures. In order to find out what the true facts are would require powers that we do not have, but we can still come to the best conclusion that we can.

Senator SPECTER. Well, I think you are right about that. I think the statistics are very hard to come by. What I come down to is my own experience. I think all of us do that. I grew up in a town of 5,000 people. It only has 4,998 since Dole and I left, Russell, KS.

When a policeman would pick up somebody on the street there, a child, a runaway, somebody from another town, there was no place to put them, except the jail. A policeman did not know what else to do.

I know from being district attorney in a big city that when the police make arrests of juveniles they have to find someplace to put them. Very frequently, not withstanding Pennsylvania's pretty good laws on this subject, for which I pushed very hard in the 1960's and 1970's a very long time ago, total separation is required but it is not always observed, the police end up doing whatever they can.

The policeman is the last guy who faces the problem and has to make the best of a very bad situation. That is why I come to my own sense of it that there are a lot of status offenders who end up in jail and there are a lot of juveniles who are charged with offenses who get mixed up with adults.

I have seen some pretty tragic things happen under those circumstances, and that is why I come back to a tough Federal law which might subject somebody to lawsuits. At least I think these hearings are very useful because people do pay attention to what we are thinking about and nobody knows when Congress might get around to acting. So some of the States may do a little something in-between time.

Thank you very much, Mr. Regnery.

Senator HATCH. Thank you, Senator Specter.

Thank you, Mr. Regnery. We appreciate your taking time to be with us today. I might point out that section 5 permits Congress to enforce already defined rights.

Mr. REGNERY. That is what it says. Right.

Senator HATCH. And to impose those obligations upon States not to define such rights in the first place. And I would cite *Oregon* v. *Mitchell* for that proposition. So I think these hearings are helpful, and we appreciate you contributing today.

Mr. REGNERY. Thank you.

Senator HATCH. We will now ask our next three witnesses to come to the table, and they are Father Bruce Ritter, who is the director of Covenant House, a home for homeless children in New York City. Father Ritter is a recognized expert and leader on the subject of how to deal with runaway youth.

Also on this panel is Detective Warren McGinniss of the New York City Police Department's Runaway Division. Detective McGinniss works daily with the substantial problems of runaways who are attracted to the glitter and glamor of New York.

And a third member of this panel is Mark Soler, the executive director of the Youth Law Center in San Francisco, CA.

If we could have all three of you come to the table, we will then turn to you, Father Ritter, and we will take your statement first.

**STATEMENTS OF FATHER BRUCE RITTER, COVENANT HOUSE, NEW YORK CITY; DETECTIVE WARREN McGINNISS, RUNAWAY DIVISION, NEW YORK CITY POLICE DEPARTMENT; AND MARK I. SOLER, YOUTH LAW CENTER, SAN FRANCISCO**

Father RITTER. Mr. Chairman, Senator Specter, I am grateful for the opportunity to make remarks on this matter of grave interest to all who work with children, especially homeless and runaway kids.

Covenant House is a short-term crisis shelter for about 15,000 children a year. Most of them have, at one time, either been adjudicated delinquents or are status offenders.

Certainly the matters under discussion here today are very difficult, very complex, touching the rights of not only the children but parents and the State as well, the right of the State to protect them.

It requires only the briefest profile of the children that we serve at Covenant House to illustrate why we are so strongly interested in the subject of this hearing. In New York about 10,000 kids a year come into our crisis centers located in midtown Manhattan.

That means 75 percent of the homeless and runaway kids who seek help in New York City come into our program. According to a recent study prepared by Doctors David Schaffer and Carol Caton of Columbia University, the population we serve fit almost exactly the subject or the concern of this hearing.

For example, 92 percent of the boys and 82 percent of the girls we serve have runaway from home at least once prior to the episode in which they came to us. Between one-third and one-half of them have had more than five previous runaway episodes. Over half have been expelled or suspended from school in the past. One in three boys and one in five girls have been previously charged with an offense. Twenty-two percent of the boys and 10 percent of the girls have been at one time in a detention center. Twelve percent of our boys and 2 percent of the girls have been in a work camp or a prison.

These children are in deep trouble and it is not difficult to see why. More than half of them, according to the Columbia study, have suffered serious physical abuse at home. A quarter of the girls have been raped. Ten percent of the boys have suffered sexual abuse at home. Sixty percent have a parent who has been convicted of a crime or who abuses drugs or alcohol. Three-fourths of the kids that come to us have moved at least once during the past year, and one-fourth experienced four or five moves in the year prior to their coming to us.

Our experience confirms what is abundantly documented elsewhere, that the differences between delinquent, status offenders and abused or neglected children are exceedingly slim and sometimes almost impossible to determine.

The Columbia study which I referred to documents as well the devastating effects of the lifestyle these children know. Twenty-four percent of the children that come to us have already attempted suicide, and another 25 percent have seriously considered it, which means that just about half of the young people that come to us have either tried to kill themselves or want to.

Eighty-two percent of our children tested in the Columbia study scored high enough on the Achenbach Child Behavior Checklist to be classified as psychologically disabled. Without clearheaded, compassionate help only a few of them have real prospects for healthy productive adulthoods.

The issues, therefore, before this subcommittee bear directly on the future of the children Covenant House serves. The crucial question, of course, is whether incarceration or secure detention is an appropriate response to the needs of these kids.

To summarize much of my written testimony, we face sometimes a very difficult and almost an impossible choice between allowing children to destroy themselves and sometimes allowing the State by inappropriate detention to destroy them. We attempt to escape this choice by every legitimate means: Diversion programs, preventive services, and community-based treatment.

Whether in many or simply a handful of cases, however, the issue will be unavoidable. The child in question will not desist from self-destructive behavoir unless coerced.

The two bills you are considering today would once and for all remove the dilemma completely by removing the States' two fully coercive tools, jail and secure detention. With respect to each of these two bills, I can only express the tentative views of someone outside the juvenile justice system but at the same time deeply committed to the thousands and thousands of kids that come to us every year.

With regard to Senate bill 522, prohibiting the incarceration of young people in adult jails, I fully support that bill and have only the most minor reservations about it. The real problem, of course, is Senate bill 520, designed to forbid the secure detention of status offenders.

As I mentioned earlier, there exist a large number of children and adolescents whose backgrounds have led them to an extremely self-destructive pattern of behavior. We have found in our experience that most will, in fact, respond to noncoercive intervention, and for them, secure detention can be severely negative in its effects.

A few, however, are beyond persuasion, counselling or the mere offering of incentive to leave dangerous circumstances. If we forbid coercive intervention by the State, we are effectively consigning them to gradual suicide, and at Covenant House we can literally document hundreds and hundreds of cases where coercive intervention, in our judgment, was absolutely necessary to protect the lives and safety of the children.

Literally hundreds of times boys and girls, 10, 11, 12, 13, and 14 years old have been engaged in life-threatening behavior, in life-threatening situations, and for all practical purposes, the State, the police, and the private agencies were absolutely powerless to intervene by providing the kind of secure detention they needed to protect them from, in effect, what became suicidal behavior.

I guess my major reservation regarding to this Senate bill is that it does not refer in any sense to the age of the children that need this kind of protection. I mean, would anyone, for example, possibly concede that a 10-year-old child, boy or girl, has the right to wander in Times Square at 2 a.m., and that no one can really effectively intervene and provide the kind of secure residential situation that this child needs for protection?

Clearly, I think where a child's behavior is so self-destructive as to endanger his or her mental or physical health, some temporary form of detention may be justified.

Because of the tendency of many family courts to set extremely low standards for what constitutes dangerous behavior, often including mere sexual acting out or verbal abuse of parents, the most stringent criteria would need to be specified for use of detention in

such cases. I think detention would only be appropriate where placement in a nonsecure setting had already been tried and failed.

One of the problems that we have encountered very often, too, is the inability of the police, because they lack the authority, to provide the kind of secure detention that sometimes quite young children need in order to be protected from their own inexperience, their own ignorance, their own devastated personalities, and from the kind of experience they have already suffered on the street. Unless the police have some kind of authority to detain children in these dangerous situations, we effectively consign them to a form of suicide.

I would like to say, in closing, that at Covenant House we have clearly resolved the issue of secure detention within our own program. We do not allow it. Every child who comes to us, unless he is clearly subject to civil commitment on grounds of insanity or suicidal intent, is free to leave the program at any time.

That is the only way our program could function and retain the respect of the children it serves. Still I do not know whether our resolution of the dilemma at Covenant House is the appropriate one for the State which has the ultimate responsibility for the health and welfare of children. No one has any final answers in this most difficult of issues.

The most prudent course seems to me a middle one. Certainly we must ban the incarceration of children with adults and eliminate the stockyarding of status offenders in essentially punitive juvenile institutions.

Yet I think we must retain for the State its legitimate role in shielding children from their most self-destructive urges. I guess really that is the essence, the bottomline of my testimony. I support quite categorically the bill banning jailing kids with adults. I think the State must retain some coercive power to protect children whose lives are threatened by their own self-destructive urges on the streets. Thank you.

[Material submitted for the record follows:]

## Prepared Statement of Father Bruce Ritter

Mr. Chairman and members of the Subcommittee: I am grateful that you have extended me the chance to discuss a matter of grave interest to all who work with children, particularly homeless and runaway children. The proposals under consideration - S.520 (the "Dependent Children's Protection Act of 1983") and S.522 (the "Juvenile Incarceration Protection Act of 1983") - show the most admirable concern for children who have until recently been our society's Untouchables, homeless, powerless and loveless. At the same time those proposals raise troubling theoretical and practical issues regarding the proper role of the State in protecting children from self-destruction. I am here not as one in possession of final answers but simply as one vitally interested in careful review of the questions.

### I. Background of Covenant House

My own personal experience with children in need of emergency help bears directly, I think, on the issues the Subcommittee faces today. That experience dates from 1968, when, in response to a charge by my theology students at Manhattan College that I was not fully living out the Gospel I so confidently taught, I moved to the Lower East Side of Manhattan to find a ministry to the poor. Instead, the ministry found me: on a bitter winter night six children knocked on the door of my tenement apartment.

It was 2 o'clock in the morning in the middle of a neighborhood completely dominated by the hard drug scene, and here were four boys and two girls at my door. There was no immediate alternative to taking them in; nor was I in any position to reject the four more children they brought the next morning - "the rest of our family", as one of my original guests put it.

That day, and for many weeks to follow, I tried every means of finding a placement for these children. But neither city nor private agencies would touch their cases. That was the beginning of our work - providing short-term, crisis care and shelter to children who find themselves on the street. It is a ministry that brings us into intimate contact both with families in desperate straits and with government

agencies mandated to help them. The problems faced by youths labelled delinquents or status offenders ("PINS" in New York usage) are among the most common we handle.

In our brief history as a child care agency we have sheltered more than 50,000 children, about half of them under 18. Currently Covenant House operates crisis centers for homeless and runaway youth in New York, Houston, and Toronto, with a new shelter facility in Fort Lauderdale scheduled to open within the year. About 15,000 children have received crisis shelter and other services in one of those centers during the past year. They come so fast and in such desperate need that we are hard pressed to provide, even on a short-term basis, the full range of services their situation demands, let alone engage in public debate over laws that affect them. It only requires, however, the briefest profile of the children we serve to illustrate why we are so strongly interested in the subject of this hearing.

II. Profile of The Children at Covenant House

Because New York is the site of our oldest, and largest program, our information is most complete regarding the children we serve there. In that metropolis alone we shelter over 8,000 children a year, or some 75% of homeless and runaway children seeking shelter in the City. A recent study prepared by Drs. David Schaffer and Carol Caton of the Columbia University College of Physicians and Surgeons, Runaway and Homeless Youth in New York City, (1984), revealed how closely the population we serve fits that which is the concern of this hearing. The study, which focused only on youths under age 18, found that 92% of the boys and 82% of the girls we serve have run away from home at least once prior to the episode in which they came to us. Between one-third and one-half of them had had more than five previous runaway episodes. Over half have been expelled or suspended from school in the past. One in three boys and one in five girls have previously been charged with an offense. Twenty-two percent of the boys and ten percent of the girls have been in a detention center at some time; twelve percent of the boys and two percent of the girls have been in a workcamp or prison.

These are children in deep trouble, and it is not difficult to see

why. Half of them have suffered serious physical abuse at home. A quarter of the girls have been raped. Sixty percent have a parent who has been convicted of a crime or who abuses drugs or alcohol. Three fourths of them have moved at least once during the past year; one fourth experienced four or more moves during that year. For the children who have been in the New York foster care system the picture is even bleaker: they have been moved more, they have run away more, and they have had far more frequent contact with the police. Blame for the behavior and plight of many children on the street thus lies as squarely on the State as it does on their parents.

All of this only confirms what is abundantly documented elsewhere: the differences between "delinquents", "status offenders", and "abused" or "neglected" children are exceedingly slim. The Columbia study shows, as well, the devastating effects of the lifestyle these children know. Fully twenty-four percent of the children we serve have previously attempted suicide, and another twenty-five percent have seriously contemplated it. Eighty-two percent score high enough on the Achenbach Child Behavior Checklist, designed to measure psychological depression and disturbance, to be considered psychologically "disabled" when they arrive at our door. Without clear-headed, compassionate help only a few of them have real prospects for a healthy, productive adulthood.

III. Parens Patriae - The Fundamental Paradox

The issues before the Subcommittee today thus bear directly on the future of the children Covenant House serves: many, if not most, will have conflict with their parents' authority of sufficient magnitude that they could be adjudged "status offenders"; many will violate criminal statutes to the degree that they could be labelled "delinquents". Whether "incarceration" or "secure detention" is an appropriate response to their situations is a crucial question in attempting to define the proper role of the State in coming to their aid.

At the heart of that question is the intractable paradox all of us face who reach out to these most desperately troubled of our youth. It is impossible, after any careful examination of their backgrounds, to blame these children for their circumstances or even their actions, yet

both those circumstances and actions are highly self-destructive. The girl who begins work for a pimp because that is all she is "qualified" to do when she runs away from an abusive home cannot in justice be punished for that decision, yet we know her life and mental health are in serious jeopardy if she continues that course of conduct. The homeless boy who steals some food and breaks into a building for a night's shelter may seem to us to have excellent justification for his panicked actions, but the theft and the break-in remain unacceptable social costs. And when both the girl and the boy refuse to accept help toward getting off the street, we may understand that decision as the product of the psychological damage they have suffered. Still we feel unable to accept that decision - in good conscience unable to allow a mere child to choose serious injury, infamy, or death.

For many decades, even centuries, we believed that our wishes to protect children could come true simply through State intervention. Yet as this Subcommittee knows too well for me to presume to elaborate, that intervention has proved consistently catastrophic for many of the children so "protected," particularly those labelled "delinquent" or "in need of supervision". Instead of providing the "rehabilitation" so blithely promised such children, the State has bludgeoned, tortured, even killed them. It has resorted to solitary confinement, ugly humiliation, and enforced boredom. It has looked the other way while hundreds of children in jail or secure detention were raped or killed by other inmates, and while hundreds more took their own lives.

Some may attempt to explain this despicable record as simply a series of aberrations, an unfortunate train of errors by a juvenile justice system which could be made to function humanely. With regard to secure juvenile facilities, this line of reasoning proceeds to the confident expectation that such facilities can be refashioned to benefit, rather than harm, the children confined. That may be true, in some isolated cases, but this sort of thinking in general seems to me hopelessly Panglossian: the sad fact is that status offenders and juvenile delinquents are a group without any of the power essential to produce better treatment in State hands. They have no political clout, and because of their

circumstances will not usually have even a parent interested in fighting for them. Like Blacks in South Africa or Jews in the Soviet Union, they are political outcasts. Where major public scandals occur we can expect temporary improvements in their condition, but the tendency of the State will always be to forget the children it has locked away and to squeeze pennies at their expense.

This, then, is the impossible choice we seem to face: between allowing children to destroy themselves and allowing the State to destroy them. It is one from which we attempt by every legitimate means to escape: e.g., diversion programs, preventive services, and community-based treatment. Whether in many or simply a handful of cases, however, the issue will be unavoidable: the child in question will not desist from self-destructive behavior unless coerced. The two bills you are considering today would once and for all resolve the dilemma, completely removing the State's two fully coercive tools - jail and "secure detention". With respect to each of the two bills I can express only the tentative views of one outside the juvenile justice system, but at the same time deeply attached to thousands of children it affects.

IV. S.522 - Adult Jails and Lockups

My attachment to those children makes it easy for me to comment on, and fully support, S.522, which would force the removal of children from adult jails and lockups. Whatever one thinks of the need to bring some coercive power to bear on certain juveniles, no benefit whatsoever, to either the child or the public, can result from his or her incarceration with adults. The only "beneficiaries" of jailing children will be the adult inmates, who will thereby have virtually unlimited opportunities to exercise dominion in every dimension over their young comrades - from simple psychological tyranny, to pedagogy in every fine point of the criminal life, to constant, devastating sexual subjugation. Because an extraordinary number of states - 27 by the last count I have seen - refuse to end this practice on their own, creation of a federally enforceable civil right seems to me necessary and critically important.

The bill you are considering, moreover, seems balanced and well drafted, if perhaps too limited in effect. I doubt, for example, that

any "special needs of areas characterized by low population density" (Section 1(A)) could outweigh the compelling need of children to be separated from adults in detention facilities. With respect to Section 1(B) of the proposal, I wonder whether an "acceptable alternative" to such a joint detention will ever be available in areas that do not have it now; it does not require "regular contact" for adult inmates to harm juveniles in jail. Finally, because of possible confusion over the capacity of minors to bring suit and of youth advocacy groups to represent them, it might be wise to clarify the procedures for enforcing the rights established under Section 3 of the proposal.

These minor questions notwithstanding, S.522 seems to me an excellent bill and one which could benefit thousands of children every year. I hope the Subcommittee accords it favorable consideration.

V. S.520 - Secure Detention of Status Offenders

The second proposal before you, S.520, designed to forbid the secure detention of status offenders, presents a much closer case. As I discussed earlier, there exist a large number of children and adolescents whose backgrounds have led them to an extremely self-destructive pattern of behavior. Most will in fact respond to noncoercive intervention; and for them secure detention can be severely negative in its effect. A few, however, are beyond persuasion, counselling, or the mere offering of incentives to leave dangerous circumstances; if we forbid coercive intervention by the State, we are effectively consigning them to gradual suicide.

For the use of the Subcommittee I have attached brief case histories of five such children with whom we have recently worked, presented, of course, under pseudonyms. Each of their cases shows the strong pull toward self-immolation that life on the street can exert. It is unrealistic to expect that many children such as these, caught in an addictive cycle of prostitution or drugs, will leave that world without some form of coercion.

In two other areas as well, the state's coercive intervention seems on its face to serve important public interests. First, we may find it difficult to describe our education system as "compulsory" if we eliminate any threat of secure detention. (In New York, for example, we have a



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generally admirable prohibition of secure placement for PINS; we also have soaring, virtually uncontrollable truancy rates. Sixty percent of New York PINS cases are in fact founded at least in part on truancy.) Second, by eliminating the possibility of strong State intervention to enforce discipline on a child, we put millions of single parents, especially mothers, at a severe disadvantage in handling adolescent children. In New York over half of all PINS cases come from mother-only homes. A physically mature adolescent is often beyond the effective control even of a strong father; many single mothers apparently rely on threats of State intervention to maintain some authority in the home.

A proposal to eliminate all possibility for secure detention of status offenders thus seems to me subject to some serious conceptual criticism. Were it not for the incredibly sorry record of such detention in the past - not simply in the abuses at detention facilities, but in the abuses in family courts which order secure detention in the most capricious fashion - I would see no merit in S.520. Because of that record, however, and because of the political realities which limit support for decent care in juvenile facilities, it seems to me worthy of serious consideration, with a number of caveats.

The most central of those reservations relates to the sweeping character of the proposal: it defines prohibited "secure detention" far more broadly than is necessary to attack most of the serious abuses at which we have all long bridled. Thus the bill seems to ignore problems related to the care of small children, for whom "secure detention" may be an essential part of normal parenting; it does not seem to allow even limited intervention in cases of a clear intention on the part of a child to throw his life or health away; and it makes no provision for temporary police intervention to return runaways to their parents. It seems to me the bill could benefit from serious consideration of its proper parameters, with amendments to address at least some of these deficiencies:

A. Age. The coercive intervention of the State seems most appropriate where the child is clearly without capacity to understand the consequences of his action. Would we allow a 10-year-old child to prowl

42nd Street at 2:00 a.m.? The bill as written could be construed to prohibit any restraint on small children by persons acting under State authority; it does not seem to reflect an appreciation of the realities of providing institutional or foster care to children not old enough to be on the streets alone. As it applies to children under, say, 12 years-of-age, it thus appears to me that the bill should be more carefully focused - perhaps simply by allowing the Executive Branch to promulgate regulations which make reasonable exceptions to the law's coverage based on children's capacities at different ages. Because young children are especially vulnerable, however, the standards set for any "secure detention" allowed for them must be extremely strict and high.

B. Extremely Self-Destructive Behavior. Where a child's behavior is so clearly self-destructive as to seriously endanger his or her mental or physical health, some temporary form of detention may be justified. Because of the tendency of many family courts to set extremely low standards for what constitutes "dangerous" behavior - often including mere sexual acting-out or verbal abuse of parents - stringent criteria would need to be specified for use of detention in such cases. Detention would only be appropriate where placement in a nonsecure setting had already been tried and had failed. Further, in view of the unlikelihood of successful rehabilitation of individuals bent on self-destruction within a secure facility, such detention should probably be limited in time, to perhaps a few days.

C. Temporary Police Custody. Many runaways are currently returned to their families through police intervention - which typically involves "secure detention" of a few hours or perhaps a day. While the potential for abuse does exist in this intervention, in a huge number of cases it does lead to successful reunification of a family. In other cases police take temporary protective custody of children who are believed to be victims of serious abuse or neglect, sometimes against the children's wishes. S.520 as written would seem to threaten the well-established function of the police in taking brief, protective custody of children in danger. As such it appears to me overbroad.

D. Long-Term Concerns. These aspects of S.520 are the most in-

congruous with the proper role of the State as parens patriae to children. In a lesser way the bill also seems somewhat insensitive to the very real issue of how "compulsory" our "compulsory education" system should be. It offers no support for single mothers to replace the admittedly tiny leverage the status offender statutes give them in dealing with unruly adolescents. It may be that state institutions are so detrimental to children, and the chances for improving them are so remote, that all other parens patriae considerations must be set aside. Still it seems to me essential that the Congress be willing to commit resources which might allow educators and single parents to preserve their authority through incentives rather than coercion. As we remove from them the stick of "reform school," we ought at least to provide seeds for a carrot.

I should say, in closing, that at Covenant House we have clearly resolved the issue of secure detention within our own program: we do not allow it. Every child who comes to us, unless he is clearly subject to civil commitment on grounds of insanity or suicidal intent, is free to leave the program at any time. That is the only way our program could function and retain the respect of the children it serves. Still, I do not know whether our resolution of the dilemma is the appropriate one for the State, which has ultimate responsibility for the health and welfare of children.

As I said, I did not come here with final answers, but simply with concern that all the central issues surfaced by the proposals receive full consideration. The most prudent course seems to me a middle one: banning incarceration of children with adults, eliminating the stockyarding of status offenders in essentially punative juvenile institutions, yet retaining for the State its legitimate role in shielding children from their most self-destructive urges. In the end I can only give emphatic applause to the serious devoted efforts of this Subcommittee - and of the Subcommittee on Juvenile Justice - to examine these wrenching issues.

I welcome any questions you might have.

## Appendix A.--Case Histories

Angela, age 16, came to Under 21 after she fled from her pimp in a Southern state. He had threatened to kill her for disobedience; she had been assaulted by his associates in the past. Angela's mother was a prostitute; she was raped by her stepfather at age 10, and began working the streets at 12. She was placed in foster care as a neglected child, but repeatedly ran away and went back to the streets. Angela was severely infected with V.D., and was advised that a hysterectomy was necessary, but never remained in placement long enough for treatment. In Angela's state, PINS jurisdiction went to age 17, but no child could be held in a locked placement on a PINS. Angela's social worker informed Under 21 that he believed only one course of action was open to him to attempt to help her: to ask the court to emancipate her, and then have her arrested and locked up as an adult. A protective, secure PINS placement could provide an alternative to such a course. Angela ultimately agreed to return to her home state, but fled the bus before arriving. Her current whereabouts are unknown.

* * * * *

Kathy, age 14, ran away from her Florida home and began working the streets in NYC. After falling deeply in debt to her pimp, she fled to Under 21 and agreed to go home. When her mother came to take her away, however, Karen ran from the bus station back to the streets. She became affiliated with a brothel and was arrested several times for prostitution, both as a juvenile and as an adult. On one occasion she was adjudicated a PINS and remanded by Family Court to a group home; on another she was placed in a group home pending trial for robbery and larceny; on both occasions she quickly left her placement. She also had frequent contacts with Under 21 staff, whose efforts to convince her to leave the streets were futile. She finally fled the brothel and went to fetch clothes from the apartment of 2 prostitutes she had previously known. They tried to force her to work for them, and when she resisted, they bound her to a chair and later tortured her. She escaped and landed in a hospital, and after a period of recovery she went back with her mother to Florida. Soon thereafter she stole money and suitcases from her mother and set out again for NYC, but she was intercepted on the way and has been placed in a psychiatric clinic in Florida.

* * * * *

Beth, age 12, was temporarily placed at Under 21 by the NYDP Runaway Squad pending her return home. She had been picked up for prostitution and had agreed to testify against her pimp, who had kidnapped her. However, she told an Under 21 attorney that she had been kidnapped from another pimp. She did indeed want to testify against the second, "bad" pimp, but then she wanted to return to her first pimp, who was "good" and "nice" to her. She stated that she intended to escape from the Runaway Squad and return to the streets.

* * * * *

Margarita, age 14, ran away from an abusive uncle to live with a 21-year-old "boyfriend". Both her parents were deceased. She quit school and became involved in drugs. Her 18-year-old brother, concerned by her lifestyle and two drug overdoses, notified BCW of her case as an abandoned child. A case was opened, but Margarita refused to meet with a social worker or accept placement. She remains on the streets.

* * * * *

Pete first ran away from home at the age of 14. He dropped out of school in the 7th grade and began "working" a couple of girls. Later he became a stripper in a male burlesque joint, and combined that with high priced hustling. He got into trouble with the law for selling stolen goods. The staff at Under 21, during his numerous fruitless visits, found him to be suicidal. His present whereabouts are unknown.

Senator HATCH. Thank you, Father.
Detective McGinniss.

STATEMENT OF WARREN McGINNISS

Detective MCGINNISS. Mr. Chairman, Senator Specter, I am very proud and pleased to be here today. I think perhaps most of what I would have said has already been said by Father Ritter with whom I have many conversations.

I did have a prepared statement which was sent down in advance and I did not have time to determine whether or not it has arrived, but I would like that entered into the record.

Senator HATCH. We do have it, and we will enter all prepared statements in the record as though fully delivered.

Detective MCGINNISS. I have also the good fortune of being able to be very brief today because a good deal of what I say are things that Father Ritter and I have spoken of many times.

We find no difficulty either as a matter of policy for my city and my State or individually for my unit in terms of keeping children out of adult facilities. So we have no argument with the second bill whatsoever.

However, I must repeat many of the things that Father Ritter said. I have the misfortune and perhaps good fortune on occasion of working in the streets with young people who are runaway or homeless.

They are runaway or homeless for many, many complex reasons. Sometimes for as little a reason as a bad report card, frequently for as severe a reason as sexual mistreatment, abuse, neglect, or just plain total unwantedness.

In our unit, we try to divide. We try to say that there are not just runaways, that there are two kinds of people. There are those who are unwanted, and we call them throwaways. Those are children who could, in fact, get on a subway train and go home if they chose to do so.

And then there is the runaway. The runaway is a little different because the runaway child frequently today is one who is running from something. It is not a Huck Finn situation. It is a situation where something in that child's heart or mind has told them that they have to go on the road. It could be something as simple as thinking that they are going to come to a big city and make it on their own.

It could be having fallen in love with an older person. So many simple reasons bring children to our cities, and then our cities corrupt them. Every city houses a subculture that lives off runaways, a subculture that hangs out in arrival areas in the city, who frequently are perhaps better at selecting who is runaway and who is vulnerable than we are. I speak now of pimps, of pornographers, of people who would exploit children.

These people have no problem. They are very difficult to convict. If they are unsuccessful with one, they have simply to address another. Any large city has thousands of young people arriving, and there is a free field to choose from.

We, in the Runaway Unit, have the function of finding these children, of walking the streets, checking the hotels, checking the

peep parlors, the various locations where children are either just exploited on the scene or kept and exploited.

Frequently that location is the street. In fact, probably most of the youngsters we find come to us from the street. It is not a situation where someone is being kept prisoner. It is not a situation where drugs necessarily are the factor that is keeping a child out.

There are deep psychological problems involved. There are perhaps feelings of shame. In many cases, we have youngsters who have left homes that appear to be reasonable enough homes and where the child may have wanted to return but did not have the opportunity or perhaps has done some things that have so shamed them that they are now ashamed to face their families. Nowadays it is commonplace to have very poor communication between child and family, many youngsters who have a really resolveable problem do not see it themselves as resolveable.

This child can be doubly victimized. They are victimized in the street. When we are fortunate enough to locate them or they come to us which they frequently do, they can be revictimized by the very system that is here supposed to protect them.

If your child, if your son or your daughter ran to New York from Kansas, from Pennsylvania, from wherever and I were to locate them, I could not tell you that I would still have your child tomorrow morning when you arrived to pick them up. I could not make such a promise, and in fact, where the situation is such that a child has already gotten into street life and has been exploited to some degree, it is even more difficult.

There is an attraction in the street. There is the feeling of low self-worth that sinks into a child's heart and mind when they are in the street that keeps them there. They can convince themselves; they can fanticize that they are enjoying what they are doing when, in fact, they are not, and in their hearts they know they are not.

Many come to us after they have been out for a long period of time and things have changed for them, and they have begun to realize it, begun perhaps to mature. I must say that the process of maturation does much more for a child in the street than anything in our system does.

Our entire system, our juvenile court system, the system of dealing with runaway children, our entire system says to the middle child, the gray area child, that is the one who is not really criminal, except perhaps for those crimes that take place to survive in the street. This child who perhaps never had to become involved in a violent crime, this child is told by our system from their very first experience that we have a bunch of rules and we have a lot of things that you are supposed to do while you are growing up but if you do not do them, nobody in our system can do anything about it.

So our system is telling the child, keep on doing what you are doing, and when you are old enough and when you are criminal enough, then we will cope with you. So we take the child who wanders out of the home because the home is perhaps not such a happy place or is overcrowded or is in the kind of building that is rundown and rat-infested. He leaves his school because he is bored with it and because he knows that nobody cares whether he goes to

that school or not and nothing in the system is going to make him go to that school.

He leaves and he wonders and he walks in the streets. We locate him. We bring him home. We bring him to a facility. We return him to his school, and we have a nice friendly conversation on the way because it is our best weapon.

That friendly conversation establishing some rapport with the child is about the most that the police department can do unless we are prepared to charge him with a crime.

We have many times been told by outsiders to solve this problem by conjuring up a crime to charge a child with in order to hold on to them. Desperate parents from other States who knew fullwell that they were not going to find their child the next day have asked us to conjure up charges that would put their child in a secure or locked facility until they got there and are willing to pay that price.

So I will repeat what Father Ritter said, what we have said for years. We do need to protect that middle child. We need a middle area. We do not need jails for children. We do not need hotels for children. We do need a facility from which a child may not leave and may not be kept in a jail-like atmosphere.

We believe that there should be a mandatory time period involved, that it should be closely supervised by the family court and that no child should be permitted to be kept in a facility from which he or she may not leave for more than a 60-day period. At the end of a 60-day period, we believe that a full report to the court and decision by the court should be made rather than just a continuing of the child's presence.

With regard to the runaway, we have had an interstate compact for many years, a compact to which all 50 of our States agreed, one which appears to work from time to time, would work better if we were able to hold on to the child.

For those not familiar, the interstate compact very briefly is an agreement between States stating that we in each State will return the runaways from another State and the home State will be responsible for the care of the child and for the transportation costs.

This is a court process. It allows the child a right to a hearing in the State in which they are found to determine whether or not it is, in fact, a good thing to return the child to their home. It is roughly a 3- or 4-day process.

It most often fails simply because the child, while waiting for the process, is free to get up and walk out of the courtroom, walk out of the shelter, whatever.

Gentlemen, we find no fault with keeping children out of adult facilities, but we plead for the middle child. We beg you, please do not let it go by again. It went by in 1974, and since 1974, we, by our system, have sentenced thousands and thousands of young people to self-destruct, to remain in the street when a simple process of reaching out to them and keeping them in a location where they could be safe while reached out to might have changed their lives.

I do not come to you with statistics. I come to you only with the feelings of someone who spent many years in the street. I tell you that many, many of those children could be turned around. Many

of those family situations, when there is such a situation, can be corrected.

Many a reconciliation can take place when the matter is not one of great significance. We have lost many, many of those young people simply because we cannot keep a child, we do not have the body present to offer services to. We do not even have a body present to return to their family the day after they are located.

Once again, we say please do not overlook the middle child. Allow the State, allow the city, under careful scrutiny, the ability to retain a child in a facility from which the child may not leave and put whatever restrictions are necessary to protect the child's rights within that situation.

Thank you.

[Material submitted for the record follows:]

PREPARED STATEMENT OF WARREN MCGINNISS

1. We have before us two Senate Bills No. 520 and No. 522. Both have to do with preventing placement of juveniles in secure facilities when not charged with serious crime. Both bills are similar enough to be considered as a rehash of the National Crime and Delinquency Prevention Bill of 1975.

2. Most states already have established the policy of not placing children in adult or secure facilities when not charged with serious crime. Surely this is true in New York State and City, and in all the states our Runaway Unit regularly deals with.

3. As before, when we speak of children's rights and fair play, we leave out the thousands of gray area children. The young people in this area are the not yet criminal, but still homeless or runaway children of our nation. Perhaps the most paramount right to a young person is the right to be a child. By nature a child has a right to expect guidance and structure from the adult world. This in addition to but equally important with food and shelter.

4. In both the Crime and Delinquency Prevention Act, and Bills No. 520 and No. 522, we have again left out the child who needs us most. When we say secure or nonsecure we really say "jail or hotel". For years now there has been no ability for the adult world to say no. No, you may not live in the street. No, you may not abuse alcohol and other chemicals.

5. We have said by our actions that a child may come and go as he pleases at any age. We have said to the neglected or unsupervised child, be free, we will deal with you when you get to be criminal.

6. Those of us in the Runaway Unit, and the Youth Services of New York City support keeping children out of secure facilities when they are not dangerous to themselves or others. However, we plead for the thousands of in-between young people who have no one to take a stand to protect their future. When the confused and unhappy runaway is located, no one can promise where the child will be tomorrow. No service can be offered, no promise can be kept, for the immature child who is free to do as they please.

7. What ever the 98th Congress does, it must not again fail the in-between child. There must be provision for a safe house, from which the child may not leave. A safe house that is not a jail, does not house dangerous people, but can assure the location of the child while services are provided.

Senator HATCH. Thank you.

Mr. Soler

## STATEMENT OF MARK I. SOLER

Mr. SOLER. Mr. Chairman and Senator Specter, I am the executive director of the Youth Law Center, a nonprofit, public interest law office located in San Francisco. I appear to you today as an attorney and the director of a program which has spent the last 6 years working on juvenile justice problems with public officials, community groups, parents, and children's advocates in more than 30 States across the country and which has litigated in 15 States on

behalf of children assaulted and abused in adult jails, detention centers, State training schools, and similar facilities.

I would like to testify today in support of S. 520 and S. 522 and specifically I would like to testify about the continuing problems of incarceration of children in adult jails and secure detention of status offenders around the country, the need for the legislation sponsored by Senator Specter and the constitutional validity of the proposed legislation.

In our office, we are particularly concerned with the incarceration of children in adult jails. We have litigated in Federal courts in six States to stop the jailing of children. In five of those States, the Federal courts have issued injunctions, and the sixth case is still pending. Indeed, when Senator Specter introduced S. 522 on February 17, 1983, two of the examples of abusive incarceration which he cited, in Boise, ID, where 17-year-old Christopher Peterman was jailed for not paying $73 in traffic tickets and then tortured and eventually beaten to death by other inmates and in Ironton, OH, where two 15-year-old girls were jailed for running away from home and then sexually assaulted by a jailer and male prisoners, are cases which we litigated and in which we obtained Federal injunctions to prevent further abuses.

Senator Specter may recall that a week after he introduced S. 520 and S. 522 I appeared before his Subcommittee on Juvenile Justice to testify on the dangers of incarceration of children in adult jails. I brought with me four witnesses who knew of those dangers firsthand: 17-year-old Daytona Stapleton, who was punished for truancy by being locked up in the same Ohio jail where the two girls had been sexually assaulted and who suffered seizures in the jail because she was denied medication for her epilepsy; Shirley Stapleton, Daytona's mother, who was fearful that others of her children would be held in jail for similar minor offenses; Rita Horn, whose oldest son, Robert, committed suicide in the jail in LaGrange, KY; and 15-year-old Greg Horn, Robert's younger brother, who had been held in the same jail for skipping school.

I am distressed to report to you that the incarceration of children in adult jails and the confinement of dependent children and status offenders in secure settings continue to be significant problems in this country. In introducing S. 522, Senator Specter noted that almost 500,000 children are held in adult jails and lockups each year. The U.S. Department of Justice's Bureau of Justice Statistics reports that despite persistent efforts to remove juveniles from adult facilities, the estimated number of juveniles in adult jails in June 1982 was unchanged from that reported 4 years earlier. The California Youth Authority has reported more than 99,000 children held in adult jails and lockups in that State during 1982, more than 52,000 held in Los Angeles County alone. In Illinois, the number of children held in adult jails and lockups actually increased from 1981 to 1982.

While there has been some progress on removing dependent children and status offenders from secure custody, that problem, too, remains significant. Although the number of such children confined to secure facilities decreased substantially since 1977, as Mr. Regnery pointed out, on a single survey day in 1982 there were still 1,100 status offenders in secure confinement. It is important to

note that, because the 1-day sample of children in adult jails was only 1,700. So there were 1,100 child status offenders in secure confinement; 1,700 children held in adult jails. Those 1,700 children were translated by BJS to be 300,000 children held in adult jails each year.

Indeed, in March 1983, the U.S. General Accounting Office issued a report to the Attorney General and the Secretary of the Interior on improved Federal efforts needed to change juvenile detention practices. After reviewing retention practices in seven States, the GAO concluded that limited progress has been made in reducing the use of secure detention. Questionable detentions still occur. Many juveniles are detained for long periods of time. Juveniles committed for treatment are held in detention facilities where treatment is not provided. Standards for juvenile detention facilities are not met in detention centers or jails, and some methods used to separate juveniles from adult inmates are inadequate or result in isolation of the juveniles.

The findings of the statistical reports are confirmed by our experience at the Youth Law Center, and we have observed a still more disturbing phenomenon. Not only are children held in adult jails throughout the country, but they are often quite young and are often held for minor or noncriminal offenses. For example, in the Ohio jail where the two girls were sexually assaulted, 457 children were incarcerated between January 1979 and September 1981, 93 of whom were 14 years of age or younger. One hundred and three of those children were charged with status offenses, particularly truancy and being unruly and ungovernable. In the Idaho jail where Christopher Peterman was killed, jail records indicate that between January 1981 and March 1983, 666 children were incarcerated in the jail. Of this total, 115 were held for status offenses, including consumption of alcohol, possession of alcohol, and possession of tobacco. Another 283 were held for traffic offenses and 105 were held as "transients." Of 153 juveniles who were held for delinquent offenses, only 17 were charged with crimes against persons. In the Kentucky jail where Robert Horn committed suicide, 1,390 children were held between January 1979 and April 1983; 78 percent of the children for whom records were available were charged with status offenses or misdemeanors and 502 of the 1,390 were children 15 years of ago or younger.

In addition to our experience with children in jails, we have taken a close look at status offenders and children held for minor offenses at secure detention facilities in several States including Washington, California, and Arizona. We conducted our most complete review of juvenile court records in Salt Lake City, UT, where we litigated on behalf of children detailed in the county juvenile detention center. The detention practices there were similar to those in other States. We found that in 1982, 2,196 juveniles were detained in the Salt Lake County detention center. Only 5 percent were charged with serious crimes against persons. The great majority were charged with property crimes or minor misdemeanors. Two hundred and seventy-five of the juveniles were charged with status offenses and another 316 were detained as a result of administrative action, usually violation of a probation order by committing a second status offense. Six of the children were detained for

reasons totally beyond their control, usually for abuse or neglect by parents. In one tragic case, a girl was locked up for trying to commit suicide, no other crime, and then held for 8 weeks awaiting placement in a mental health program.

Incidentally, the litigation in Salt Lake has had a salutary effect: working with the Attorney General's office and the Juvenile court judges, we have developed detention criteria which will ensure that only juveniles truly at risk or dangerous to others are detained. We estimate that overall detentions will be reduced by 50 percent.

To combat these continuing problems, S. 520 and S. 522 contain two vitally important provisions. First, the proposed legislation contains specific prohibitions on incarceration of children in adult jails and secure detention of nonoffenders. There has been a great deal of debate around the country by public officials, attorneys, parents, and children's advocates as to whether the provisions in the Juvenile Justice and Delinquency Prevention Act for deinstitutionalization of status offenders and for separation of juvenile and adult inmates are enforceable by children held in violation of those provisions or whether the only remedy is a total cutoff of Juvenile Justice Act funds to offending States by the Office of Juvenile Justice.

Our office has litigated this issue in four Federal courts and all four have agreed that children held in jails without adequate separation from adult inmates may have recourse to the courts violations of the Juvenile Justice Act. This is so because such children are clearly the class for whose benefit the Juvenile Justice Act was enacted and because the "remedy" of total cutoff of Federal funds is illogical and ineffective. The clear and specific prohibitions contained in S. 520 and S. 522 are necessary to confirm that Congress wants nonoffenders out of secure facilities and children out of adult jails and to end the colloquies and wasteful litigation over whether the Juvenile Justice Act contains enforceable provisions. With that matter settled, public officials can direct their attention to the real issue, that is, how they can develop community-based alternatives to adult jails and secure facilities so they can stop these dangerous and punitive practices.

Second, it is critical that S. 520 and S. 522 provide for civil actions by those whose rights are violated. In part because of the continuing debate whether the Juvenile Justice Act contains enforceable provisions, it is our experience at the Youth Law Center that the great majority of sheriffs, juvenile court judges, probation officers, county commissioners and State officials with whom we have spoken are not motivated to remove children from adult jails by a desire to comply with the provisions of the Juvenile Justice Act. Many are not even aware of provisions of the Juvenile Justice Act. Others consider it irrelevant to their ongoing detention and incarceration practices. Removing nonoffenders from secure detention is rarely discussed.

However, concern over the possibility of civil litigation does motivate public officials. In fact, many public officials have told us that litigation is the only way that children will be removed from jails in their State. Children are held in jails for many reasons: because it is convenient to hold them there and inconvenient to take them anywhere else, because they have always been held there and local

officials see no reason to change their practices now, because local officials are not aware of alternative placements which are already available in communities or could be readily developed, because some officials find it politically expedient to take a punitive attitude toward children who misbehave. These are powerful forces resisting reform and, in many parts of the country, they simply will not yield to the Federal carrot of funds from the Office of Juvenile Justice. It is unfortunate but undeniably true that the stick of potential litigation must also be present if real change is to occur.

Senator HATCH. Mr. Soler, let me interrupt you at this point. Let us put the rest of your statement in the record. We do not want to cut any of you off, but we are both running out of time. Senator Specter has to preside over another hearing at 4 and I have to leave a little bit before 4. So what I would like to do is put your statement in the record and, of course, all of your statements have made an excellent record for us today.

Mr. SOLER. Senator, may I have just 60 seconds to just finish. I wanted to respond to a couple of things that Mr. Regnery mentioned with respect to federalism and the 10th amendment.

Senator HATCH. Sure.

Mr. SOLER. As a lawyer, who has researched these issues, I feel it is important to point out that I am afraid he has seriously misstated the law with respect to section 5 of the 14th amendment. He raised the issue about whether enactment of S. 520 and S. 522, pursuant to section 5 of the 14th amendment, would violate the 10th amendment.

That issue has already been conclusively decided by the U.S. Supreme Court in the case of *City of Rome* v. *United States,* and a second case, *Fitzpatrick* v. *Bitzker.* Both of those are cited in my written testimony.

The Supreme Court has clearly said that because the 14th amendment was enacted after the 10th amendment that enactments pursuant to section 5 of the 14th amendment have precedence in terms of their power over the 10th amendment.

Mr. Regnery also mentioned that there has been no clear judicial determination of constitutional rights with respect to S. 520 and S. 522 and therefore, in his opinion, section 5 is inappropriate. That also is an incorrect statement of the law.

As I say in my written testimony, the Supreme Court and the courts of appeal have upheld perhaps a dozen Federal statutes under section 5 of the 14th amendment. Many of these statutes do not involve clear constitutional rights under the 14th amendment, but in fact, involve rights which are reasonable extensions under the 14th amendment. I cite the Public Works Employment Act, the Age Discrimination Act, the Civil Rights Attorney's Fees Act. All these are cited in my written testimony.

He also mentioned that there was only one Federal case holding that there is a constitutional right of children not to be in adult jails. There are at least four such cases. They are cited in my written testimony, and there are five other cases that we have litigated at the Youth Law Center.

So there are at least nine cases around the country where courts have said it is violation of children's rights to be held in adult jails.

Finally, Mr. Regnery mentioned Justice Burger's dissent in *EEOC* v. *Wyoming*, the Supreme Court case. Of course, we learn the first day of law school that the dissenting opinions are not the controlling opinions, but more important he misses a case that was decided after *EEOC* v. *Wyoming*, but does resolve the issue left there, and that case is *Ramirez* v. *Puerto Rico Fire Service*, and in that case the First Circuit Court of Appeals said, "This court must first decide a question left open by *EEOC* v. *Wyoming*, that is, whether Congress enacted the Age Discrimination in Employment Act pursuant to its powers under section 5 of the 14th amendment," the issue Mr. Regnery raised.

The Court of Appeals for the First Circuit clearly said that, in fact, the Age Discrimination in Employment Act was enacted pursuant to section 5 of the 14th amendment and was appropriate legislation under that provision.

So there is no question, I think, that S. 520 and S. 522 are appropriate legislation under section 5. Thank you.

Senator HATCH. Well, the real question, it seems to me, is is this a reasonable extension of recognized constitutional rights? You say it is for these two bills. Others dispute that.

[Material submitted for the record follows:]

# PREPARED STATEMENT OF MARK I. SOLER

Mr. Chairman and Members of the Subcommittee:

My name is Mark Soler and I am the Executive Director of the Youth Law Center, a non-profit public interest law office located in San Francisco, California. I appear before you today as an attorney and the director of a program which has spent the last six years working on juvenile justice problems with public officials, community groups, parents, and children's advocates in more than 30 states across the country, and which has litigated in 15 states on behalf of children assaulted and abused in adult jails, juvenile detention centers, state training schools, and similar facilities.

I would like to testify today in support of S.520, the Dependent Children's Protection Act of 1983, and S.522, the Juvenile Incarceration Protection Act of 1983. Specifically, I would like to testify about the continuing problems of incarceration of children in adult jails and secure detention of status offenders around the country, the need for the legislation sponsored by Senator Specter, and the constitutional validity of the proposed legislation.

## THE CONTINUING PROBLEMS OF INCARCERATION OF CHILDREN IN ADULT JAILS AND SECURE DETENTION OF STATUS OFFENDERS

In our office we are particularly concerned with the incarceration of children in adult jails. We have litigated in federal courts in six states to stop the jailing of children: in five of those cases, the federal courts have issued injunctions, the sixth case is still pending. Indeed, when Senator Specter introduced S.522 on February 17, 1983, two of the examples of abusive incarceration he cited -- in Boise, Idaho, where 17-year-old Christopher Peterman was jailed for not paying $73 in traffic tickets and then tortured and eventually beaten to death by other inmates, and in Ironton, Ohio, where two 15-year-old girls were jailed for briefly running away from home and then sexually assaulted by a jailer and male prisoners -- are cases we litigated, and in which we obtained federal injunctions to prevent further abuses.

Senator Specter may recall that a week after he introduced S.520 and S.522, I appeared before his Subcommittee on Juvenile Justice to testify on the dangers of incarceration of children in adult jails. I brought with me four witnesses who knew of these dangers firsthand: 17-year-old Daytona Stapleton, who was punished for truancy by being locked up in the same Ohio jail where the two girls had been sexually assaulted, and who suffered seizures in the jail because she was denied medication for her epilepsy; Shirley Stapleton, Daytona's mother, who was fearful that others of her fourteen children would be held in jail for similar minor offenses; Rita Horn, whose oldest son, Robert, committed suicide in the jail in LaGrange, Kentucky; and 15-year-old Greg Horn, Robert's younger brother, who had been held in the same jail for skipping school.

I am distressed to report to you that the incarceration of children in adult jails, and the confinement of dependent children and status offenders in secure settings, continue to be significant problems in this country. In introducing S.522, Senator Specter noted that almost 500,000 children are held in adult jails and lockups each year. The U. S. Department of Justice's Bureau of Justice Statistics reports that despite "persistent efforts to remove juveniles from adult facilities," the estimated number of juveniles in adult jails in June, 1982, was unchanged from that reported more than four years earlier. The California Youth Authority has reported more than 99,000 children held in adult jails and

lockups in that state during 1982, more than 52,000 in Los Angeles county alone. In Illinois the number of children held in adult jails and lockups actually increased from 1981 to 1982.

While there has been some progress on removing dependent children and status offenders from secure custody, that problem, too, remains significant. Although the number of such children confined in secure facilities decreased substantially since 1977, on a single survey day in 1982 there were still 1,100 status offenders in secure confinement, according to the National Council on Crime and Delinquency and U.S. Census Bureau figures. Indeed, in March, 1983, the U.S. General Accounting Office issued a report to the Attorney General and the Secretary of the Interior on "Improved Federal Efforts Needed to Change Juvenile Detention Practices." After reviewing detention practices in seven states, the GAO concluded that limited progress has been made in reducing the use of secure detention, questionable detentions still occur, many juveniles are detained for long periods of time, juveniles committed for treatment are held in detention facilities where treatment is not provided, standards for juvenile detention facilities are not met in detention centers or jails, and some methods used to separate juveniles from adult inmates are inadequate or result in isolation.

The findings of the statistical reports are confirmed by our experience at the Youth Law Center, and we have observed a still more disturbing phenomenon: not only are children held in adult jails throughout the country, but they are often quite young, and are often held for minor or non-criminal offenses. For example, in the Ohio jail where the two girls were sexually assaulted, 457 children were incarcerated between January, 1979, and September, 1981, 93 of whom were 14 years old or younger. One hundred and three of these children were charged with status offenses, particularly truancy and being "unruly" or "ungovernable." In the Idaho jail where Christopher Peterman was killed, jail records indicate that between January, 1981, and March, 1983, 666 children were incarcerated in the jail. Of this total, 115 were held for status offenses, including consumption of alcohol, possession of alcohol, and possession of tobacco. Another 283 were held for traffic offenses, and 105 were held as "transients." Of 153 juveniles who were held for delinquent offenses, only 17 were charged with crimes against persons. In the Kentucky jail where Robert Horn committed suicide, 1,390 children were held between January, 1979, and April, 1983: 78% of the children for whom records were available were charged with status offenses or misdemeanors, and 502 of the 1,390 children were fifteen years of age or younger.

In addition to our experience with children in jails, we have taken a close look at status offenders and children held for minor offenses at secure juvenile detention facilities in several states, including Washington, California, and Arizona. We conducted our most complete review of juvenile court records in Salt Lake City, Utah, where we litigated on behalf of children detained in the county juvenile detention center. The detention practices there were similar to those in other states. We found that in 1982, 2,196 juveniles were detained in the Salt Lake County Detention Center. Only 5% were charged with serious crimes against persons; the great majority were charged with property crimes or minor misdemeanors. Two hundred and seventy-five of the juveniles were charged with status offenses, and another 316 were detained as a result of administrative action (often violation of a probation order by committing a new status offense). Six children were detained for reasons totally beyond their control, usually for abuse or neglect by parents. In one tragic case, a girl was locked up for trying to commit suicide, then held eight weeks awaiting placement in a mental health program.

Incidentally, the litigation in Salt Lake has had a salutary effect: working with the Attorney General's office and the Juvenile Court

judges, we have developed detention criteria which will insure that only juveniles truly at risk or dangerous to others are detained. We estimate that overall detentions will be reduced by 50%.

THE NEED FOR S.520 AND S.522

To combat these continuing problems, S.520 and S.522 contain two vitally important provisions. First, the proposed legislation contains specific prohibitions on incarceration of children in adult jails and secure detention of nonoffenders. There has been a great deal of debate around the country, by public officials, attorneys, parents, and children's advocates, as to whether the provisions in the Juvenile Justice and Delinquency Prevention Act for deinstitutionalization of status offenders and separation of juveniles and adult inmates are enforceable by children held in violation of those provisions, or whether the only remedy is a total cut-off of Juvenile Justice Act funds to offending states by the Office of Juvenile Justice and Delinquency Prevention.

Our office has litigated this issue in four federal courts, and all four have agreed that children held in jails without adequate separation from adult inmates may have recourse to the courts for violations of the Juvenile Justice Act. This is so because such children are clearly the class for whose benefit the Juvenile Justice Act was enacted, and because the "remedy" of total cut-off of federal funds is illogical and ineffective. The clear and specific prohibitions contained in S.520 and S.522 are necessary to confirm that Congress wants nonoffenders out of secure facilities and children out of adult jails, and to end the colloquies and wasteful litigation over whether the Juvenile Justice Act contains enforceable provisions. With that matter settled, public officials can direct their attention to the real issue: how they can develop community-based alternatives to adult jails and secure facilities, so they can stop these dangerous and punitive practices.

Second, it is critical that S.520 and S.522 provide for civil actions by those whose rights are violated. In part because of the continuing debate whether the Juvenile Justice Act contains enforceable provisions, it is our experience at the Youth Law Center that the great majority of sheriffs, juvenile court judges, probation officers, county commissioners, and state officials with whom we have spoken are not motivated to remove children from adult jails by a desire to comply with the provisions of the Juvenile Justice Act. Many are not even aware of the provisions of the Juvenile Justice Act, others consider it irrelevant to their ongoing detention and incarceration practices. Removing nonoffenders from secure detention is rarely discussed.

However, concern over the possibility of civil litigation does motivate public officials. In fact, many public officials have told us that litigation is the only way that children will be removed from jails in their state. Children are held in jails for many reasons: because it is convenient to hold them there, and inconvenient to take them anywhere else; because they have always been held there, and local officials see no reason to change their practices now; because local officials are not aware of alternative placements which are already available in their communities or could be readily developed; because some officials find it politically expedient to take a punitive attitude toward children who misbehave. These are powerful forces resisting reform, and, in many parts of the country they simply will not yield to the federal carrot of funds from the Office of Juvenile Justice. It is unfortunate but undeniably true that the stick of potential litigation must also be present if real change is to occur.

I might add that because of this situation, a great deal of our work at the Youth Law Center does not involve suing public officials, but, instead, working with them by providing information and training as to

their potential civil liability for holding children in their jails, and technical assistance on the development of appropriate alternative facilities. Public officials throughout the country are eager to obtain this information, and we find that providing it is an effective means of accomplishing reform without having to resort to litigation. This process would not work, however, if the potential for litigation were not real and immediate.

CONSTITUTIONAL VALIDITY OF S.520 AND S.522

Finally, I would like to remark briefly on the constitutional validity of S.520 and S.522 in terms of the power of Congress to enact the proposed legislation.

Section 5 of the Fourteenth Amendment confers on Congress the "power to enforce by appropriate legislation, the provisions of this article." In introducing the proposed amendment to the Senate in 1866, Senator Howard described Section 5 as "'a direct affirmative delegation of power to Congress,'" and added:

> It casts upon Congress the responsibility of seeing to it, for the future, that all the sections of the amendment are carried out in good faith, and that no State infringes the rights of persons or property. I look upon this clause as indispensable for the reason that it thus imposes upon Congress this right and this duty. It enables Congress, in case the States shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment.

Katzenbach v. Morgan, 384 U.S. 641, 648 (1966), quoting Cong. Globe, 39th Cong., 1st Sess., 2766, 2768 (1866).

In Katzenbach v. Morgan, the Supreme Court noted that Section 5 grants to Congress the same broad authority expressed in the Necessary and Proper Clause (Art. 1, sec. 8, cl. 18). Id. at 650. The classic formulation of the extent of that power was stated more than 160 years ago by Chief Justice Marshall in McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 421, 4 L.Ed. 579 (1819):

> Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consist with the letter and spirit of the constitution, are constitutional.

Accordingly, the Supreme Court described the scope of congressional power as follows, in Ex Parte Virginia, 100 U.S. 339, 345-46 (1879):

> Whatever legislation is appropriate, that is adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

In the years since Ex Parte Virginia, the Supreme Court and the lower federal courts have confirmed this broad grant of power to Congress and repeatedly upheld, pursuant to Section 5, the validity of federal legislation which proscribes specific conduct by the states. Thus the courts have upheld the constitutionality of Section 4(e) of the Voting

Rights Act of 1965, Katzenbach v. Morgan, supra; Section 201 of the Voting Rights Act Amendments of 1970, Oregon v. Mitchell, 400 U.S. 112 (1970); the 1972 amendments to Title VII of the Civil Rights Act of 1964, Fitzpatrick v. Bitzker, 427 U.S. 445 (1976); the "minority business enterprise" provision of the Public Works Employment Act of 1977, Fullilove v. Klutznick, 448 U.S. 448 (1980); and the 1974 amendment to the Age Discrimination in Employment Act, Equal Employment Opportunity Commission v. Elrod, 674 F.2d 601 (7th Cir. 1982), U.S. Equal Employment Opportunity Commission v. County of Calumet, 686 F.2d 1249 (7th Cir. 1982), Ramirez v. Puerto Rico Fire Service, 715 F.2d 694 (1st Cir. 1983); and the Civil Rights Attorney's Fees Awards Act of 1976, Maher v. Gagne, 448 U.S. 122 (1980). Cf. Monroe v. Pape, 365 U.S. 167, 171-172 (1961). The federal courts have also upheld federal statutes enacted pursuant to the analogous section of the Fifteenth Amendment. See, e.g., South Carolina v. Katzenbach, 383 U.S. 301 (1966); City of Rome v. United States, 446 U.S. 156 (1980).

Perhaps the best summary of these cases was made by Justice Rehnquist in Fitzpatrick v. Bitzker, supra, 427 U.S. at 455-56, in words particularly appropriate to S.520 and S.522:

> There can be no doubt that this line of cases has sanctioned intrusions by Congress, acting under the Civil War Amendments, into the judicial, executive, and legislative spheres of autonomy previously reserved to the States. The legislation considered in each case was grounded on the expansion of Congress' powers--with the corresponding diminution of state sovereignty--found to be intended by the Framers and made part of the Constitution upon the States' ratification of those Amendments....
>
> When Congress acts pursuant to Section 5, not only is it exercising legislative authority that is plenary within the terms of the constitutional grant, it is exercising that authority under one section of a constitutional Amendment whose other sections by their own terms embody limitations on state authority. We think that Congress may, in determining what is "appropriate legislation" for the purpose of enforcing the provisions of the Fourteenth Amendment, provide for private suits against States or state officials which are constitutionally impermissible in other contexts.

In view of this clear, broad mandate from the federal courts, there seems to be little doubt as to the constitutional validity of S.520 and S.522. Several federal courts have held that incarceration of juveniles in adult jails violates the juveniles' constitutional rights. D.B. v. Tewksbury, 545 F.Supp. 896 (D. Ore. 1982); Cox v. Turley, 506 F.2d 1347 (6th Cir. 1974); Baker v. Hamilton, 345 F.Supp. 345 (W.D. Ky. 1972); Swansey v. Elrod, 386 F.Supp. 1138 (N.D. Ill. 1975). The proposed legislation is certainly appropriate as a means of enforcing the constitutional rights of children pursuant to Section 5 of the Fourteenth Amendment.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

FILED
U.S. DISTRICT COURT
1984 JUN -7 AM 11: 35
DISTRICT OF IDAHO
JERRY L. CLAPP, CLERK

| | |
|---|---|
| FREDERICK YELLEN, JR., a minor, by and through FREDERICK YELLEN, SR. and ANITA YELLEN, his parents and legal guardians; et al, | Civil No. 83-1026 |
| Plaintiffs, | O R D E R |
| vs. | |
| ADA COUNTY, IDAHO; et al, | |
| Defendants. | |

The Plaintiffs through their attorneys of record filed a Motion for Preliminary Injunction on or about January 12, 1984. The Motion seeks to prohibit incarceration in the Ada County Jail of persons under the age of 18 except those persons who are charged with violent offenses under Idaho Code §16-1806A and those persons who have been waived to adult status. The Motion is set to be heard by the Court on June 20, 1984. A status conference was held at the request of the Defendants on June 1, 1984, at which time the Court was advised that Defendants do not oppose the Motion. Based upon Defendants' lack of opposition to the Motion;

IT IS ORDERED AND THIS DOES HEREBY ORDER that Defendants shall not detain or incarcerate any person under the age of 18 in the Ada County Jail except those who have been waived to adult status or those who are initially charged as adults pursuant to Idaho Code §§16-1806 and 16-1806A, as those statutes now exist or may be subsequently amended or codified.

This Order shall exclude from incarceration and detention in the Ada County Jail any juvenile who might otherwise be treated as an adult pursuant to the laws of Idaho because of commission or alleged commission of an offense not addressed by the Youth Rehabilitation Act, except as provided in Idaho Code §§16-1806 and 16-1806A, as those statutes now exist or may be subsequently amended or codified, including but not limited to, those juveniles charged with traffic offenses, fish and game

violations, criminal or civil contempt, or other like provisions of law. This Order shall not prohibit the short term detention of juveniles where the person making the arrest has a good faith belief that the juvenile is at least 18 years of age.

A copy of this Order shall be provided to the Sheriff of Ada County, the Ada County Prosecuting Attorney, the Chief of Police of the City of Boise, the Boise City Attorney, the Chief of Police of Garden City, the Garden City Attorney, the Chief of Police of the City of Meridian, the Director of the Ada County Juvenile Detention Center, the Director of the Idaho Department of Fish and Game, the Director of the Idaho Department of Law Enforcement, the United States Marshal for the State of Idaho, the Supervisory Investigator for the Bureau of Immigration and Naturalization Service (within the State of Idaho), and all judges within Ada County having authority to commit juveniles to the Ada County Jail for detention, incarceration or other disposition.

This Order is not a determination on the merits of Plaintiffs' Motion for Preliminary Injunction and cannot be offered in this or any other litigation as an admission of any kind or for the purpose of establishing liability or fault. Nor does this Order resolve the claims of the individually named Plaintiffs in this action for money damages. Plaintiffs and Defendants reserve the right to request attorneys fees and costs and Plaintiffs and Defendants reserve the right to oppose such request.

DATED this 7th day of June, 1984.

Ray McNichols, U.S. District Judge

COPY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
AUG 31 1983

JOHNNIE K. and PATRICK M., minors, by and through their next friend, Maria E. Rodriguez, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

THE COUNTY OF CURRY, NEW MEXICO, MICHAEL C. GATTIS, ANITA C. MERRILL, and CHARLES B. STOCKTON, County Commissioners of the County of Curry, New Mexico, individually and in their official capacities; WESLEY MYERS, Sheriff of the County of Curry, New Mexico, individually and in his official capacity; and RUBEN E. NIEVES and FRED T. HENSLEY, District Judges of the Ninth Judicial District of the State of New Mexico, in their official capacities,

Defendants.

Civil Action
No. CV-81-0914-M

SETTLEMENT AGREEMENT AND FINAL ORDER AS TO DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

This is a civil rights action for declaratory judgment, permanent injunction, damages and other relief brought by juveniles confined in the Curry County Jail in Clovis, New Mexico. The Complaint in this action was filed on November 4, 1981. The Plaintiffs, on behalf of themselves and a class of juveniles similarly situated, alleged that the Defendants subjected them to cruel, unconscionable and illegal conditions of confinement in the jail; illegal incarceration in the jail without adequate separation from confined adult offenders; unlawful secure detention in the jail of juveniles who are charged with or who have committed offenses which would not be criminal if committed by adults ("status offenses"); and denial of adequate and appropriate placements as alternatives

to the jail. The Defendants answered and denied the material allegations of the Complaint.

By Order dated December 30, 1982, this Court certified that this action should proceed as a class action under Rule 23(b) of the Federal Rules of Civil Procedure. The certified class includes:

> All juveniles who have been incarcerated as of November 4, 1981 in the Curry County Jail and will be in the future.

While neither admitting nor denying any allegations of fact or legal liability, the parties have now agreed to the entry of a settlement agreement and order resolving all of Plaintiff's claims for declaratory and injunctive relief and for damages. Therefore, based upon the Stipulation and agreement of all parties to this action, by and through their respective counsel, and based upon all matters of record in this case,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over this matter.

2. The named Plaintiffs in this action are JOHNNIE K. and PATRICK M., suing by and through their next friend, MARIA E. RODRIGUEZ.

3. The Defendants in this action are:

THE COUNTY OF CURRY, NEW MEXICO;

CLAUDE W. BURKETT, CULLEN WILLIAMS and TRAVIS STOVALL, Commissioners of Curry County, New Mexico;

MICHAEL C. GATTIS, ANITA C. MERRILL nad CHARLES B. STOCKTON, former County Commissioners of Curry County;

WESLEY MYERS, the Sheriff of Curry County; and

RUBEN E. NIEVES and FRED T. HENSLEY, District Judges of the Ninth Judicial District of the State of New Mexico.

4. This action is properly maintained as a class action under Rule 23(b) of the Federal Rules of Civil Procedure

5. The Plaintiff class consists of:

All juveniles who have been incarcerated as of November 4, 1981 in the Curry County Jail and will be in the future.

6. On or before September 1, 1983, the Defendants shall cease to order detention and shall cease to detain juveniles in the Curry County Jail.

7. From the date of entry of this Settlement Agreement and Final Order until September 1, 1983, the Defendants will confine juveniles in the Curry County Jail for a period of time not to exceed eight (8) hours.

8. The Defendants County of Curry, New Mexico, Michael C. Gattis, Anita C. Merrill, Charles B. Stockton and Wesley Myers will pay to the Plaintiff Johnnie K. the sum of $600.00.

9. The Defendants County of Curry, New Mexico, Michael C. Gattis, Anita C. Merrill, Charles B. Stockton and Wesley Myers will pay to the Plaintiff Patrick M. the sum of $400.00.

10. No just reason exists for delay in entering this Settlement Agreement and Final Order as to all Defendants in accordance with its terms.

11. The agreement set forth herein constitutes a fair and reasonable resolution of Plaintiff's claims for declaratory and injunctive relief, and for damages, and is therefore approved by this Court. The Court's Order as to these issues is final and the Court does not retain continuing jurisdiction as to these issues.

12. The issue of Plaintiffs' attorneys fees is still in dispute between the parties and therefore the Court retains jurisdiction of this issue.

UNITED STATES DISTRICT JUDGE

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Attorney for Defendant Judges

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY

RITA HORN, et al.,

Plaintiffs,

v.

OLDHAM COUNTY, KENTUCKY, et al.,

Defendants.

Civil Action No. C-83-0208-L B

ORDER GRANTING PRELIMINARY INJUNCTION

Plaintiffs have moved this Court for a preliminary injunction prohibiting and restraining defendants from certain practices which authorize, allow, or promote direct contact between juvenile and adult inmates at the Oldham County Jail in LaGrange, Kentucky. The Court has considered plaintiffs' motion and the brief submitted in support thereof; the responses filed by defendants to plaintiffs' motion; the deposition testimony of defendants James Summitt, Oldham County Jailer, and Glenn Hancock, Oldham County Deputy Jailer; and the other evidence presented by plaintiffs in support of their motion.

NOW, THEREFORE, the Court finds that there are substantial questions at issue; that there is a likelihood of success on the merits of plaintiffs' claims; that a balancing of injuries to the parties requires preliminary injunctive relief; and that the public interest would be served by such preliminary relief. Accordingly, the Court hereby orders that the defendants, except the juvenile trusties, shall be and are preliminarily enjoined form engaging in the following practices:

(A) placing juvenile and adult inmates together in the same cell in the Oldham County Jail;

(B) allowing juvenile and adult inmates to be on the grounds outside the jail at the same time without supervision;

(C) taking juvenile inmates into the adult male section of the jail.

IT IS SO ORDERED this 29 day of July, 1983. 3:25 PM

Thomas A. Ballantine Jr.
THOMAS A. BALLANTINE, JR.
United States District Judge

Bond $100.

Bond posted this 29th day of July, 1983.

ENTERED
JUL 29 1983
JESSE W. SNIDER, CLERK
BY [illegible]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

DEBORAH DOE, a minor, by and through her Next Friend, John Doe; and ROBERT ROE, a minor, by and through his Next Friend, Richard Roe; on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

LLOYD W. BURWELL, Juvenile Court Judge of Lawrence County, Ohio, in his official capacity;

MARK A. MALONE, DONALD LAMBERT, and DR. CARL T. BAKER, as the County Commissioners of Lawrence County, Ohio, individually and in their official capacities;

DANIEL HIERONIMUS, Sheriff of Lawrence County, Ohio, individually and in his official capacity; and

LAWRENCE COUNTY, OHIO;

Defendants.

Civil Action No. C-1-81-415

CONSENT JUDGMENT

This is a civil rights action for declaratory judgment, permanent injunction, damages and other relief brought by juveniles confined in the Lawrence County Jail in Ironton, Ohio. The complaint in this action was filed on April 22, 1981. The plaintiffs, on behalf of themselves and a class of juveniles similarly situated, alleged that the defendants subjected them to cruel, unconscionable and illegal conditions of confinement in the jail; abuses of judicial authority, including arbitrary and capricious confinement in the jail; illegal incarceration in the jail without adequate separation from confined adult offenders; unlawful secure detention in the jail of juveniles who are charged with or who have committed offenses which would not be criminal if committed by adults ("status offenses"); denial of adequate and appropriate placements as alternatives to the jail;

and false imprisonment. The defendants duly answered and denied the material allegations of the complaint.

On January 14, 1982, a hearing was held as to the appropriateness of the certification of the plaintiff class. By order dated January 15, 1982, this court certified that this action should proceed as a class action under Rule 23(b) of the Federal Rules of Civil Procedure. The certified class includes all juveniles who have been incarcerated in the Lawrence County Jail since January 1, 1979, presently are incarcerated, or would be incarcerated there.

While neither admitting nor denying any allegations of fact or legal liability, the parties have now agreed to the entry of a consent judgment. Therefore, based upon the stipulation and agreement of all parties to this action, by and through their respective counsel, and based upon all matters of record in this case, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This court has jurisdiction over this matter.

2. The named plaintiffs in this action are DEBORAH DOE, a minor, suing by and through her next friend John Doe, and ROBERT ROE, a minor, suing by and through his next friend Richard Roe. The actual identities of the named plaintiffs are known to counsel for all parties, and are subject to a protective order of this Court.

3. The defendants in this action are LLOYD W. BURWELL, the Juvenile Court Judge for Lawrence County; DANIEL HIERONIMUS, the Sheriff of Lawrence County; MARK A. MALONE, DONALD LAMBERT, and DR. CARL T. BAKER, the County Commissioners of Lawrence County; and LAWRENCE COUNTY, Ohio.

4. This action is properly maintained as a class action under Rule 23(b) of the Federal Rules of Civil Procedure.

5. The plaintiff class consists of all juveniles who have been incarcerated in the Lawrence County Jail since January 1, 1979, presently are incarcerated there, or will be incarcerated

there in the future.

6. The defendants will pay to the plaintiff DEBORAH DOE the sum of thirty seven thousand dollars ($37,000) in consideration of a full and final release from all of her claims in this matter.

7. The defendants will pay to the plaintiff Richard Roe the sum of three thousand, five hundred dollars ($3,500.00) in consideration of a full and final release from all of his claims in this matter.

8. Upon the entry of this consent judgment by the Clerk of this Court, the defendants agree to cease utilizing the Lawrence County Jail for the detention of any and all juveniles.

9. The defendants will furnish to counsel for the plaintiffs monthly reports on all juveniles appearing before the Lawrence County Juvenile Court and their place of detention and/or disposition, if any. Defendants will provide this information for a period of one year.

10. The plaintiffs reserve the right to request such attorneys' fees and costs as this Court deems appropriate and defendants reserve the right to oppose such requests.

11. The agreement set forth herein constitutes a fair and reasonable resolution of plaintiffs' claims and is therefore approved by this Court.

Dated this day of April, 1982.

S. Arthur Spiegel
United States District Judge

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Counsel for Plaintiffs

Loren H. Warboys
Counsel for Plaintiffs

Elinor Alger
Counsel for Plaintiffs

John K. Issenmann
Counsel for Defendants LLOYD W. BURWELL, COUNTY COMMISSIONERS MARK MALONE, DONALD LAMBERT, and DR. CARL T. BAKER, and LAWRENCE COUNTY, OHIO

E. Joel Wasp
Counsel for Defendants COUNTY COMMISSIONERS MARK MALONE, DONALD LAMBERT and DR. CARL T. BAKER, and LAWRENCE COUNTY, OHIO

Stephen A. Bailey
Counsel for Defendant DANIEL HIERONIMUS

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
1982

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

STEVEN RAY WEATHERS, et al.,

Plaintiffs,

vs.

FRANK TRAYLOR, et al.,

Defendants.

Civil Action No. 80-M-1238

PARTIAL CONSENT JUDGMENT

This is a civil rights action for declaratory judgment, permanent injunction, damages and other relief brought by juveniles confined in the Mesa County Jail in Grand Junction, Colorado. The complaint in this action was filed on September 18, 1980. The plaintiffs, on behalf of themselves and a class of juveniles similarly situated, alleged that the defendants subjected them to cruel, unconscionable and illegal conditions of confinement in the jail; illegal incarceration in the jail without adequate separation from confined adult offenders; unlawful secure detention in the jail of juveniles who are charged with or who have committed offenses which would not be criminal if committed by adults ("status offenses"); denial of adequate and appropriate placements as alternatives to the jail; and false imprisonment. The defendants answered and denied the material allegations of the complaint.

By order dated June 30, 1982, this Court certified that this action should proceed as a class action under Rule 23(b) of the Federal Rules of Civil Procedure. The certified class includes:

> All juveniles who are currently, have been during the past two years, and in the future will be confined in the Mesa County Jail, except those juveniles who have been and in the future will be certified to stand trial as adults pursuant to C.R.S. 1973, §19-1-104(4).

While neither admitting nor denying any allegations of fact

or legal liability, the parties have now agreed to the entry of a partial consent judgment resolving all of plaintiffs' claims for declaratory and injunctive relief. Therefore, based upon the stipulation and agreement of all parties to this action, by and through their respective counsel, and based upon all matters of record in this case, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over this matter.

2. The named plaintiffs in this action are STEVEN WEATHERS, SHANNON SATRANG, and JAMES McGOWAN, suing by and through their next friend, CHERYL JACOBSON.

3. The defendants in this action are:

FRANK TRAYLOR, Executive Director of the Colorado Department of Institutions; ORLANDO MARTINEZ, Director of the Division of Youth Services of the Colorado Department of Institutions;

RUBEN A. VALDEZ, Executive Director of the Colorado Department of Social Services; GILBERT R. SLADE, THOMAS C. HICKMAN, M.D., FLORANGEL MENDEZ, MONA B. THAYER, LARRY VELASQUEZ, JAMES MARTIN, MARK MOTEST, SHARON LIVERMORE and FELIX CORDOVA, members of the Colorado State Board of Social Services;

MAXINE ALBERS, RICK ENSTROM, and GEORGE WHITE, the County Commissioners of Mesa County, Colorado, and the members of the Board of Social Services for Mesa County;

MICHAEL KELLY, former County Commissioner of Mesa County; and BOARD OF COUNTY COMMISSIONERS of Mesa County;

JOHN PATTERSON, Director of Mesa County Social Services;

BETSY CLARK, LOUIS BRACH, ROBERT HOLMES, GARY LUCERO, EARL JOHNSON, FRANK DUNN, and ARLENE HARVEY, members of the City Council of Grand Junction Colorado; and JANE QUIMBY, DALE HOLLINGSWORTH, and WILLIAM O'DWYER, former members of the City Council;



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RICK ENSTROM, ROBERT GERLOFS, SAM KELLY, GENE LENDERMAN, E.E. LEWIS and FRANCIS RALEY, the members of the Board of Directors of the Mesa County Health Department;

KENNETH LAMPERT, the Executive Director of the Mesa County Health Department;

L.R. (DICK) WILLIAMS, the Sheriff of Mesa County;

RUFUS MILLER, Chief Probation Officer of the Mesa County Probation Department; and

JAMES J. CARTER, WILLIAM M. ELA, and CHARLES A. BUSS, Judges of the Twenty-First Judicial District of the State of Colorado.

4. This action is properly maintained as a class action under Rule 23(b) of the Federal Rules of Civil Procedure.

5. The plaintiff class consists of:

> All juveniles who are currently, have been during the past two years, and in the future will be confined in the Mesa County Jail, except those juveniles who have been and in the future will be certified to stand trial as adults pursuant to C.R.S. 1973, §19-1-104(4).

6. Effective upon the entry of this Partial Consent Judgment, the defendants agree to cease utilizing the Mesa County Jail cells for the confinement of any member of the class except for a period of time not to exceed six (6) hours while said member(s) await transportation to a juvenile detention facility.

7. Effective upon the entry of this Partial Consent Judgment, the defendants agree to cease utilizing the second floor of the Mesa County Jail for the confinement of any member of the class.

8. Defendants MARTINEZ, TRAYLOR and defendant BOARD OF COUNTY COMMISSIONERS agree to identify, prior to December 1, 1982, a facility separate from the Mesa County Jail suitable for remodeling or construction as the Grand Junction Youth Holding Facility.

9. Defendants agree that, prior to April 1, 1983, that facility will be remodeled or constructed for the temporary holding of juveniles in Mesa County. Said remodeling or construction will be done pursuant to previous appropriations under Chapter 1, Section 3(8), Colorado Session Laws, 1979, as amended by Chapter 14, Section 2, Colorado Session Laws, 1980.

10. Defendants agree that, effective April 1, 1983, no member of the class shall be held in the Mesa County Jail under any circumstances.

11. Defendants MARTINEZ, TRAYLOR and defendant BOARD OF COUNTY COMMISSIONERS agree that the Division of Youth Services and the Department of Institutions will contract, under mutually agreeable terms, with the BOARD for the operation of said facility until such time as a legislative appropriation for the operation of that facility or a juvenile detention facility is made, but in no event later than June 30, 1985.

12. Effective July 1, 1985, defendants MARTINEZ and TRAYLOR agree that Department of Institutions and the Division of Youth Services will provide secure juvenile detention services for all delinquents, traffic, or fish and game law violators who are securely detained from Mesa County.

13. Defendants MARTINEZ and TRAYLOR agree to request and recommend to the legislative and executive branches that a juvenile detention facility on the Western Slope of Colorado be provided for the use of members of the class in the future.

14. Defendant BOARD OF COUNTY COMMISSIONERS agree to request and encourage the Mesa County and Western Slope legislators to introduce and/or support legislation to implement the recommendations in paragraph 13.

15. Defendant WILLIAMS agrees that, until a permanent juvenile detention facility is constructed on the Western Slope of Colorado, defendant WILLIAMS will provide transportation to

the Jefferson County Youth Center or some other detention facility within forty-eight (48) hours of the placement of a juvenile in the Grand Junction Youth Holding Facility, except that a juvenile may be held an additional twenty-four (24) hours for the purpose of a detention hearing or when weather makes travel impossible.

16. At all times when a juvenile is confined, there will be one (1) wide-awake staff person on duty in the Grand Junction Youth Holding Facility.

17. Defendants agree that the Sheriff will provide backup security to the Facility as may be required.

18. Defendants agree that no juvenile will be placed in detention at the Facility, except by Court order.

19. Defendants agree that no juvenile will be placed in detention at the Facility unless he or she has been screened by the Division of Youth Services intake team.

20. Defendants agree that no juvenile will be placed in detention in the Grand Junction Youth Holding Facility or in the Mesa County Jail who is:

a. Under fourteen (14) years of age;

b. Placed there as a sentence or condition of probation.

21. Defendants agree that only alleged or adjudicated delinquents or traffic or fish and game law violators may be placed in detention in either the Mesa County Jail, or the Grand Junction Youth Holding Facility.

22. Defendants CARTER, ELA and BUSS will enter into an agreement with defendant MARTINEZ and the Division of Youth Services for the provision of comprehensive intake services for juveniles in Mesa County.

23. The BOARD OF COUNTY COMMISSIONERS agrees to provide Sheriff WILLIAMS the necessary funds for the carrying out of his responsibilities under his agreement, consistent with Colorado

statutory authority, C.R.S. 1973, §30-25-101 et seq.

24. All parties agree that, upon the cessation of the use of the Mesa County Jail for holding all members of this class, a supplemental order may be entered as follows:

a. Dismissing defendants VALDEZ, SLADE, HICKMAN, MENDEZ, THAYER, VELASQUEZ, MARTIN, MOTEST, LIVERMORE, and CORDOVA, as defendants in this matter;

b. Dismissing plaintiffs' claims for declaratory and injunctive relief as to defendants ALBERS, ENSTROM and WHITE in their capacities as members of the Board of Social Services for Mesa County;

c. Dismissing plaintiffs' claims for declaratory and injunctive relief as to defendant PATTERSON;

d. Dismissing plaintiff's claims for declaratory and injunctive relief as to defendants ENSTROM, GERLOFS, KELLY, LENDERMAN, LEWIS, and RALEY, in their capacities as members of the Board of Directors of the Mesa County Health Department;

e. Dismissing plaintiffs' claims for declaratory and injunctive relief as to defendant LAMPERT.

25. The defendants WILLIAMS and ~~MARTINEZ~~ will furnish to counsel for plaintiffs monthly reports on all juveniles placed in either the Mesa County Jail or the Grand Junction Youth Holding Facility for a period of one (1) year from the date of entry of this judgment, setting forth the name, age, offense, and length of stay of each such juvenile.

26. ~~The defendants/~~Board of County Commissioners, Martinez and Williams will notify plaintiffs' counsel within one week of the following events:

a. Agreement as to the site or facility to be known as the Grand Junction Youth Holding Facility;

b. Acquisition of the site or facility to be known as the Grand Junction Youth Holding Facility;

//

c. Signing of the contracts for the remodeling or construction of the Grand Junction Youth Holding Facility; and

d. Cessation of the use of the jail for the holding of members of the class.

27. This Partial Consent Judgment does not resolve the claims of the named plaintiffs in this action for damages from the defendants.

28. No damages are being requested of any individual defendant who is being sued solely in his or her official capacity.

29. Plaintiffs reserve the right to request such attorneys' fees and costs as this Court deems appropriate, and defendants reserve the right to oppose such request.

30. No just reason exists for delay in entering this Partial Judgment as to all defendants in accordance with its terms.

31. The agreement set forth herein constitutes a fair and reasonable resolution of plaintiffs' claims for declaratory and injunctive relief, and is therefore approved by this Court.

DATED this 5th day of November, 1982.

Richard P. Matsch

/s/ Richard P. Matsch
HON. RICHARD P. MATSCH
United States District Judge

/s/ Philip Bertenthal
PHILIP BERTENTHAL

/s/ Mark I. Soler
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MILLER

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

DEC 16 1983

PAUL L. BADGER
Clerk

RECEIVED CLERK.

DEC 14 1983

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

D.J.R., a minor, by and through his next friend and attorney, WILLIAM W. DOWNES, JR., on his behalf and on behalf of all others similarly situated,

Plaintiffs,

vs.

THE HONORABLE JOHN FARR LARSON, THE HONORABLE SHARON PEACOCK, and THE HONORABLE REGNAL W. GARFF, JR., Second District Juvenile Court Judges, in and for Salt Lake County, State of Utah,

Defendants.

Case No. C-82-0811W

PRETRIAL ORDER

This matter came before the Court on November 29, 1983, at a pre-trial conference held before the Honorable David K. Winder, pursuant to Rule 16 of the Federal Rules of Civil Procedure.

I. APPEARANCES

FOR PLAINTIFFS: William W. Downes, Jr., Collard, Pixton, Iwasaki & Downes, 417 Church Street, Salt Lake City, UT 84111

Mark I. Soler and James R. Bell, Youth Law Center, 1663 Mission St., 5th Fl., San Francisco, CA 94103

FOR DEFENDANTS: Robert Parrish, Assistant Attorney General, 236 State Capitol Building, Salt Lake City, UT 84114

II. JURISDICTION AND VENUE

This is an action for declaratory and injunctive relief. Jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331(a), 1343(3)(4), 2201 and 2202; 42 U.S.C. § 1983; and Rules 57 and 65 of the Federal Rules of Civil Procedure. The jurisdiction of this Court is not disputed and is hereby determined to be present.

Venue is laid by plaintiffs in the Central Division of the District of Utah, the statutory basis for the claim of venue being 28 U.S.C. § 1391. Venue is not disputed and is determined by the Court to be proper.

III. GENERAL NATURE OF THE CLAIMS

A. Plaintiffs' Claims

Plaintiffs seek declaratory and injunctive relief on behalf of themselves and the class of juveniles similarly situated in this action, which challenges the practices of the defendant Juvenile Court judges in detaining juveniles at the Salt Lake Detention Center ("Detention Center"), in Salt Lake City, Utah.

Plaintiffs assert in their first claim that:

Defendants' policies, practices, acts and omissions violate plaintiffs' rights to due process of law and equal protection of the laws as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution insofar as defendants:

(A) detain plaintiffs at the Detention Center without a

prompt judicial determination of probable cause;

(B) detain plaintiffs at the Detention Center without a judicial determination of probable cause based upon:

(1) sworn statements or testimony of persons having direct personal knowledge of the facts or circumstances surrounding the offenses with which the plaintiffs are charged, or

(2) sworn statements or testimony of persons who have been informed of the facts or circumstances surrounding the offenses with which the plaintiffs are charged by informants having direct personal knowledge of such facts or circumstances, where such statements or testimony demonstrate:

(a) the underlying circumstances from which the informants concluded that the alleged offenses had been committed and the plaintiffs named in the petitions had committed them, and

(b) the underlying circumstances from which the persons providing sworn statements or testimony concluded that the informants were credible and their information reliable.

Plaintiffs assert in their second claim that:

Defendants' policies, practices, acts and omissions violate plaintiffs' rights to due process of law and equal protection of the laws as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution insofar as

§ 78-3a-30 U.C.A. and Juvenile Court Rules 8(2)(3)(7) and 13, on their face and as applied by defendants:

(A) fail to adequately limit the alleged delinquent acts for which plaintiffs may be detained;

(B) fail to provide any procedural safeguards to limit which plaintiffs may be detained;

(C) fail to provide adequate substantive criteria to limit which plaintiffs may be detained;

(D) authorize detention decisions for plaintiffs by defendants on the basis of limited information presented in a summary fashion;

(E) are utilized principally to impose punishment on plaintiffs, without any adjudication, for alleged delinquent acts;

(F) provide for punishment of plaintiffs in the form of institutional detention without requiring proof of future delinquency beyond a reasonable doubt;

(G) fail to specify any standard of proof under which plaintiffs may be confined in institutional detention;

(H) authorize punishment of plaintiffs through institutional incarceration, without any adjudication of guilt, in the absence of a compelling governmental interest;

(I) permit plaintiffs' liberty to be denied, prior to adjudication of guilt, in defendants' exercise of unfettered discretion as to issues of considerable uncertainty, including the likelihood of future delinquent behavior;

(J) fail to limit the possible future delinquent acts by plaintiffs which defendants may consider in deciding whether to detain plaintiffs.

B. Defendants' Claims

Defendants generally admit the factual allegations regarding the named plaintiffs and admit that the defendant judges do not make pre-adjudication determinations of probable cause for juveniles detained at the Detention Center.

Defendants deny violating plaintiffs' rights to due process of law and equal protection of law as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution, in that defendants have the authority and duty to order detention of juveniles pursuant to Utah Code Ann. § 78-3a-30 (1953).

Defendants concede that a probable cause hearing is required to meet due process concerns and are in the process of implementing procedures for such a hearing. The substantive criteria for determination of appropriateness of detention are also being revised by defendants. Furthermore, defendants will implement on December 1, 1983, new admission guidelines and have implemented a five-day detention arraignment rule.

IV. DEFENDANTS' AFFIRMATIVE DEFENSES

(1) The complaint fails to state a claim upon which relief may be granted.

(2) Defendants have acted at all times pursuant to the

requirements of a valid statute. Utah Code Ann. § 78-3a-30 (1953), as amended.

(3) Defendants acted at all times in good faith and are entitled to qualified immunity.

V. UNCONTESTED FACTS

(1) Plaintiff D.J.R., a minor child, is a citizen of the United States and resides in the State of Utah. Said plaintiff was confined at the Detention Center at the time of the filing of this lawsuit.

(2) Plaintiff L.A.M., a minor child, is a citizen of the United States and resides in the State of Utah. Said plaintiff was confined in the Detention Center at the time of the filing of the Amended Complaint in this lawsuit.

(3) Defendants, the Honorable John Farr Larson, the Honorable Sharon Peacock, and the Honorable Regnal W. Garff, Jr., are judges of the Second District Juvenile Court in and for Salt Lake County, State of Utah. Said defendants are sued in their official capacities.

(4) This action has been certified to proceed as a class action, by order of this Court, dated February 15, 1983. The certified class consists of all juveniles who have been, are now, or in the future will be confined at the Detention Center as a consequence of actions or omissions by the defendant Juvenile Court judges.

(5) Salt Lake County maintains the Detention Center for the

pre-adjudication detention of juveniles.

(6) On or about July 29, 1982, plaintiff D.J.R. was arrested and taken into custody by law enforcement officers; said law enforcement officers transported D.J.R. to the Detention Center.

(7) On July 29, 1982, D.J.R. was booked into the Detention Center and verbally notified that he was alleged to have committed a burglary and theft in Salt Lake County on or about July 21, 1982.

(8) On or about July 30, 1982, D.J.R. came before defendant, the Honorable John Farr Larson, for a detention hearing to determine whether he would be detained at the Detention Center prior to trial. Judge Larson placed temporary custody of D.J.R. with Salt Lake County and ordered that D.J.R. should not be released from the Detention Center without the permission of the court.

(9) A petition was filed in August, 1982 in the Second District Juvenile Court alleging the commission by D.J.R. of certain criminal offenses, to wit: burglary and theft.

(10) D.J.R. was arraigned on August 19, 1982 before the Honorable John Farr Larson. At said arraignment, said juvenile, D.J.R., denied all four allegations of the petition. Trial of the petition was scheduled before the Second District Juvenile Court on September 3, 1982. At arraignment, D.J.R., through counsel, moved that D.J.R. be released from the Detention Center as a result of the failure of a neutral judicial officer to find

probable cause that the crimes alleged in the petition had been committed and that D.J.R. had committed them. Judge Larson denied this motion and continued D.J.R. in confinement at the Detention Center.

(11) There has been no judicial determination that probable cause exists, i.e., that the criminal acts alleged in the petition have been committed and that D.J.R. has committed them.

(12) On or about July 2, 1982, plaintiff L.A.M. was arrested and taken into custody by law enforcement officers, and transported to the Salt Lake County Detention Center. At the Detention Center, L.A.M. was verbally notified that he was alleged to have committed a burglary and theft in Salt Lake City on or about June 30, 1982, and a vehicle burglary in Salt Lake City on July 2, 1982.

(13) On or about July 6, 1982, plaintiff L.A.M. came before the Honorable Judith F. Whitmer for a detention hearing. At this detention hearing, the court ordered said plaintiff detained at the detention center pending further order of the court.

(14) On or about July 26, 1982, L.A.M. appeared before the Honorable Judith F. Whitmer for arraignment. L.A.M. admitted his commission of the vehicle burglary and denied the remaining allegations of the petition. On November 10, 1982, these allegations were dismissed after trial. L.A.M. was released from detention on July 26, 1982.

(15) There was no judicial determination that probable cause existed, i.e., that the criminal acts alleged in the petition had

been committed and that L.A.M. had committed them.

(16) Defendants engage in a policy and practice of detaining plaintiffs who are alleged to have committed criminal acts at the Detention Center for some period of time while said plaintiffs await trial on the charges against them.

(17) Defendants do not make a prompt judicial determination of probable cause in plaintiffs' cases, i.e., determinations that the unlawful acts alleged in the petition have been committed and that the plaintiffs named in the petition have committed the unlawful acts.

(18) Defendants do not make judicial determinations of probable cause in plaintiffs' cases based upon:

(a) sworn statements or testimony of persons having direct personal knowledge of the facts or circumstances surrounding the offenses with which the plaintiffs are charged, or

(b) sworn statements or testimony of persons who have been informed of the facts or circumstances surrounding the offenses with which the plaintiffs are charged by informants having direct personal knowledge of such facts or circumstances, where such statements or testimony demonstrate:

(i) the underlying circumstances from which the informants concluded that the alleged offenses had been committed and the plaintiffs named in the petitions had committed them, and

(ii) the underlying circumstances from which the persons providing sworn statements or testimony concluded that the informants were credible and their information reliable.

(19) Utah Code Ann. § 78-3a-30 (1953) provides that a juvenile court judge may order that a child be placed or kept in a detention facility if "it is unsafe for the child or the public to leave him with his parents, guardian or custodian and if the child requires physical restriction."

(20) Rule 11 of the Utah Juvenile Court Rules provides that a juvenile court judge may order that a child initially be held in a detention facility if "it is not safe to release the child."

(21) Rule 13 of the Utah Juvenile Court Rules provides that a juvenile court judge may, at a detention hearing, order that a child be continued in detention if "one or more grounds exist under Rule 8."

(22) Rule 8 lists, inter alia, the following conditions or reasons for finding that it is "not safe" to release the child:

2. The child has a pattern of delinquent behavior so extensive as to indicate probability of further delinquency pending court processing of his case.

3. The child has problems of conduct or behavior so serious or his family relationships are so strained he is likely to be involved in further delinquency in the near future.



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7. The seriousness of the alleged offense.

(23) A "delinquent act" is an act which would constitute a crime if committed by an adult.

(24) A "status offense" is an act which violates the law but which would not constitute a crime if committed by an adult.

(25) Being truant from school, violating curfew, running away from home, and being "ungovernable" are status offenses.

(26) Some juveniles are brought to the Salt Lake Detention Center by law enforcement officers who have taken the juvenile into custody after observing the juvenile commit a delinquent act or a status offense.

(27) Juveniles are also brought to the Detention Center by law enforcement officers who have taken the juvenile into custody after receiving a complaint or a referral from another person that the juvenile committed a crime or a status offense.

(28) Juveniles are also brought to the Detention Center by law enforcement officers who have taken the juvenile into custody after receiving a complaint or a referral from the juvenile's parents or guardian.

(29) When law enforcement officers take a juvenile into custody, they may (1) release the juvenile, (2) release the juvenile to a responsible adult, (3) take the juvenile to the Youth Services Center, or (4) take the juvenile to the Detention Center.

(30) After a juvenile is taken to the Detention Center, the juvenile, if not on probation or if custody has not been

transferred to an agency, has an intake interview with either an intake worker or a probation officer.

(31) After a juvenile in detention has an intake interview, the intake worker or probation officer decides whether to release the juvenile or to continue the juvenile in detention.

(32) The intake worker or probation officer uses a list of offenses in deciding whether to release the juvenile or continue the juvenile in detention.

(33) In deciding whether to release the juvenile or to continue the juvenile in detention, the intake worker or probation officer considers, in addition to the offense the juvenile is alleged to have committed, (1) whether the juvenile is on probation, (2) whether the juvenile's parents are available to take charge of the juvenile, and (3) if the parents are available, whether the intake worker or probation officer believes it is safe to release the juvenile to the parents.

(34) On February 5, 1981, the Juvenile Court judges and the Chief of the Intake Division of the Salt Lake Detention Center issued guidelines for admission of juveniles to detention. The guidelines became effective on February 15, 1981, and remain in effect at the present time.

(35) New guidelines regarding admission of juveniles to detention will go into effect December 1, 1983.

(36) At the time of the intake interview, the intake worker or probation officer usually has a statement from the police regarding the reason for detention. The statement is generally a

brief paragraph.

(37) At the time of the intake interview, if the juvenile has previously appeared before the Juvenile Court, the intake worker or probation officer may also have the juvenile's past record, which may include the juvenile's legal file and the juvenile's social file.

(38) A juvenile's legal file contains the papers on all previous Juvenile Court proceedings involving the juvenile.

(39) A juvenile's social file contains materials on the personal history and family of the juvenile.

(40) The juvenile's parents may be present at the intake interview, as well as the juvenile's attorney, if the parents have retained an attorney. The Juvenile Court does not provide an attorney for the juvenile at the intake interview. If the juvenile is in the custody of a social agency, a representative of the agency may also be present at the intake interview.

(41) After the intake interview, if the intake worker or probation officer decides to continue the juvenile in detention, the juvenile will be held for a detention hearing the next morning, or if it is a weekend, the morning of the next day the Juvenile Court is in session.

(42) After the intake interview, the juvenile may be released to the extended children's shelter, located on the grounds of the Salt Lake Detention Center, or to a shelter home with a family in the community. There are eight beds available in the extended shelter care facility.

(43) A juvenile court judge hears approximately 2 or 3 detention hearings each day.

(44) The purpose of the detention hearing is for the Juvenile Court judge or the referee to determine whether it is safe, both for the child and the community, to release the child from secure detention. Decisions of the referee are subject to approval of a Juvenile Court judge.

(45) The juvenile's parents may be present at the detention hearing, as well as the juvenile, the intake worker or probation officer, a representative of a social agency which has custody of the juvenile, and the juvenile's attorney if the parents have retained an attorney. The Juvenile Court does not provide an attorney for the juvenile at the detention hearing.

(46) At the detention hearing, the Juvenile Court judge or referee generally has the juvenile's detention file, which contains papers on the current detention; the legal file; the Form 5, which contains a listing of any prior charges against the juvenile and the disposition of the charges; and the intake sheet from the intake interview, with the law enforcement officer's statement. The Juvenile Court judge or referee may also have a more detailed police report. On the back of the Form 5 may be the intake worker's comments on the intake interview. The Juvenile Court judge or referee primarily uses the legal file to determine whether the juvenile is currently on probation.

(47) At the detention hearing, the Juvenile Court judge or referee basically looks at four things: (1) the juvenile's prior

record of offenses; (2) the seriousness of the present alleged offense; (3) the amount of control of the juvenile that there appears to be in the juvenile's home, and how the juvenile responds to that control; and (4) whether the juvenile is likely to appear at future court hearings.

(48) At the detention hearing, the intake worker or probation officer often makes a recommendation whether the judge or referee should release the juvenile or continue the juvenile in detention.

(49) Detention hearings usually last from 5 to 15 minutes.

(50) At the conclusion of the detention hearing, if the juvenile is continued in detention, the judge or referee makes a specific finding on a printed form as to the reason for continued detention.

(51) At the conclusion of the detention hearing, if the juvenile is continued in detention, the juvenile may be held (1) for judge's release only, (2) for release by the probation department, or (3) release by the social agency which has custody of the juvenile.

(52) If the juvenile is continued in detention at the detention hearing, the judge or referee sets a date for arraignment, within five days of the detention hearing. At the arraignment hearing, the judge or referee also reviews the detention decision.

(53) At the arraignment hearing, the judge or referee reviews information obtained on the juvenile since the detention

hearing, and determines whether to release the juvenile or continue the juvenile in detention. Weekly detention review hearings are held thereafter.

(54) At the detention hearing, in addition to releasing the juvenile to the juvenile's parents, to the extended shelter care facility, or to a shelter home, the judge or referee may release the juvenile on home detention or "house arrest." On home detention and on house arrest the juvenile must remain at home at all times unless the juvenile is with his or her parents, or is at school or a job. Juveniles on home detention are supervised by detention personnel, employed by Salt Lake County. Juveniles on house arrest are currently on probation and are supervised by state employees. Otherwise, the restrictions on juveniles under home detention and under house arrest are the same.

(55) At the detention hearing, the judge or referee does not have any specific criteria or guidelines for assessing the weight to be given to the juvenile's prior record, the seriousness of the present offense, the degree of control in the home, and whether the juvenile will appear at future court hearings, in deciding whether to release the juvenile or continue the juvenile in detention.

(56) Within five days after the detention hearing an arraignment is held, at which time the judge or referee reads the juvenile the allegations in the petition and asks the juvenile to admit or deny the allegations. If the juvenile denies the allegations, the matter is set for trial.

(57) At the arraignment, the persons present are usually the juvenile, the juvenile's parents, the probation officer, and the juvenile's attorney if an attorney has been appointed or retained.

(58) If the juvenile denies the allegations in the petition at the arraignment, a pretrial hearing is scheduled in two or three weeks. At the pretrial hearing, the judge meets with counsel to determine what the issues will be at trial, and if there is a possibility of resolving the matter through a plea bargain or other means. If the matter can be settled, the case is set for a dispositional hearing. If the matter cannot be settled, the next proceeding is the trial.

(59) At the trial or adjudication hearing, the standard of proof used by the juvenile court judge is whether the allegations are proven beyond a reasonable doubt. In matters other than the trial or adjudicatory hearing, the standard of proof used by the judge is whether the evidence is clear and convincing.

(60) In 1982, 2,196 juveniles were detained in the Detention Center.

(61) In 1982, one of the juveniles detained in the Detention Center was charged with a capital offense.

(62) In 1982, 36 of the juveniles detained in the Detention Center were charged with first degree felonies: all 36 were charged with offenses against persons.

(63) In 1982, 273 of the juveniles detained in the Detention Center were charged with second degree felonies: 24 were charged

with crimes against persons, 247 were charged with crimes against property, and 2 were charged with crimes against public order.

(64) In 1982, 242 of the juveniles detained in the Detention Center were charged with third degree felonies: 48 were charged with crimes against persons, 178 were charged with crimes against property, and 16 were charged with crimes against public order.

(65) In 1982, 93 of the juveniles detained in the Salt Lake Detention Center were charged with Class A misdemeanors: 12 were charged with crimes against persons, 78 were charged with crimes against property, and 3 were charged with crimes against public order.

(66) In 1982, 743 of the juveniles detained in the Detention Center were charged with Class B misdemeanors: 38 were charged with crimes against persons, 253 were charged with crimes against property, and 452 were charged with crimes against public order.

(67) In 1982, 115 of the juveniles detained in the Detention Center were charged with Class C misdemeanors: 1 was charged with a crime against persons, 20 were charged with crimes against property, and 94 were charged with crimes against public order.

(68) In 1982, 20 of the juveniles detained in the Detention Center were charged with infractions: 16 were charged with crimes against property, and 4 were charged with crimes against public order.

(69) In 1982, 275 of the juveniles detained in the Detention Center were charged with status offenses.

(70) In 1982, 21 of the juveniles detained in the Detention

Center were charged with moving traffic violations.

(71) In 1982, 4 of the juveniles detained in the Detention Center were charged with non-moving traffic violations.

(72) In 1982, 6 of the juveniles detained in the Detention Center were detained for conditions beyond the control of the juveniles, i.e., for abuse or neglect by parents.

(73) In 1982, 316 of the juveniles detained in the Detention Center were detained as a result of administrative action.

(74) In 1982, 51 of the juveniles detained in the Detention Center were detained for reasons other than those listed above.

VI. CONTESTED ISSUES OF FACT

The contested issues of fact remaining for decision are:

(1) Whether approximately 90 percent of the juveniles in detention are continued in detention after the detention hearing because the Juvenile Court judges need more information on the juveniles' cases.

(2) Whether, when the extended shelter care facility is filled, some juveniles who could be released to the facility are continued in detention until space is available in the facility.

(3) Whether approximately 90% of plaintiffs class detained by defendants at the Detention Center for longer than twelve (12) hours were ultimately released from secure confinement either before their adjudication hearings or as a result of their adjudication hearings in the years 1979 through 1982.

(4) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8, 11 and 13, as applied by defendants, result in a majority of plaintiffs never being confined as a consequence of a disposition imposed after an adjudication of delinquency.

(5) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8, 11 and 13, on their face and as applied by defendants, fail to provide adequate substantive criteria to limit which plaintiffs may be detained.

(6) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8, 11 and 13, on their face and as applied by defendants, authorize detention decisions for plaintiffs by defendants on the basis of limited information presented in summary fashion.

(7) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8, 11 and 13, on their face and as applied by defendants, are utilized principally to impose punishment on plaintiffs, without any adjudication, for alleged delinquent acts.

(8) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8, 11 and 13, on their face and as applied by defendants, provide for punishment of plaintiffs in the form of institutional detention without requiring proof of future delinquency beyond a reasonable doubt.

(9) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8, 11 and 13, on their face and as applied by defendants, fail to specify any standard of proof under which plaintiffs may be confined in institutional detention.

(10) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8,

11 and 13, on their face and as applied defendants, authorize punishment of plaintiffs through institutional incarceration, without any adjudication of guilt, in the absence of a compelling governmental interest.

(11) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8, 11 and 13, on their face and as applied by defendants, permit plaintiffs' liberty to be denied, prior to adjudication of guilt, in defendants' exercise of unfettered discretion as to issues of considerable uncertainty, including the likelihood of future delinquent behavior.

(12) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8, 11 and 13, on their face and as applied by defendants, fail to limit the possible future delinquent acts by plaintiffs which defendants may consider in deciding whether to detain plaintiffs.

VII. CONTESTED ISSUES OF LAW

The contested issues of law in addition to those implicit in the foregoing issues of fact are:

(1) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8, 11 and 13, on their face and as applied by defendants, fail to adequately limit the alleged delinquent acts for which plaintiffs may be detained.

(2) Whether § 78-3a-30 U.C.A. and Juvenile Court Rules 8, 11 and 13, on their face and as applied by defendants, fail to provide any procedural safeguards to limit which plaintiffs may be detained.

(3) Whether defendants' policies, practices, acts and omissions violate plaintiffs' rights to due process of law and equal protection of the laws as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution insofar as defendants:

(A) detain plaintiffs at the Detention Center without a prompt judicial determination of probable cause;

(B) detain plaintiffs at the Detention Center without a judicial determination of probable cause based upon:

(i) sworn statements or testimony of persons having direct personal knowledge of the facts or circumstances surrounding the offenses with which the plaintiffs are charged, or

(ii) sworn statements or testimony of persons who have been informed of the facts or circumstances surrounding the offenses with which the plaintiffs are charged by informants having direct personal knowledge of such facts or circumstances, where such statements or testimony demonstrate:

(a) the underlying circumstances from which the informants concluded that the alleged offenses had been committed and the plaintiffs named in the petitions had committed them, and

(b) the underlying circumstances from which the persons providing sworn statements or testimony concluded that the informants were credible and their

information reliable.

(4) Whether defendants' policies, practices, acts and omissions violate plaintiffs' rights to due process of law and equal protection of the laws as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution insofar as § 78-3a-30 U.C.A. and Juvenile Court Rules 8(2)(3)(7) and 13, on their face and as applied by defendants:

(A) fail to adequately limit the alleged delinquent acts for which plaintiffs may be detained;

(B) fail to provide any procedural safeguards to limit which plaintiffs may be detained;

(C) fail to provide adequate substantive criteria to limit which plaintiffs may be detained;

(D) authorize detention decisions for plaintiffs by defendants on the basis of limited information presented in a summary fashion;

(E) are utilized principally to impose punishment on plaintiffs, without any adjudication, for alleged delinquent acts;

(F) provide for punishment of plaintiffs in the form of institutional detention without requiring proof of future delinquency beyond a reasonable doubt;

(G) fail to specify any standard of proof under which plaintiffs may be confined in institutional detention;

(H) authorize punishment of plaintiffs through institutional incarceration, without any adjudication of guilt,

in the absence of a compelling governmental interest;

(I) permit plaintiffs' liberty to be denied, prior to adjudication of guilt, in defendants' exercise of unfettered discretion as to issues of considerable uncertainty, including the likelihood of future delinquent behavior;

(J) fail to limit the possible future delinquent acts by plaintiffs which defendants may consider in deciding whether to detain plaintiffs.

VIII. PLAINTIFFS' EXHIBITS

Plaintiffs may introduce the following exhibits at trial:

A. Juvenile Court records for juveniles detained at the Salt Lake Detention Center during 1982, including legal files, social files, Form 5's, detention files, and similar records on said juveniles.

B. Depositions of the defendants and other witnesses, with attached exhibits.

C. Lists of intake workers, probation officers, admissions counselors, and child welfare workers employed at the Detention Center.

D. Resumes of plaintiffs' expert witnesses.

E. Robert C. Kihm, "Prohibiting Secure Juvenile Detention: Assessing the Effectiveness of National Standards Detention Criteria" (Community Research Forum).

F. Kentucky Youth Advocates and Community Research Forum, "A Community Response to a Crisis: The Effective Use of Detention

and Alternatives to Detention in Jefferson County, Kentucky" (1980).

G. Ira Schwartz, "Juvenile Detention and Alternatives: Scott County, Iowa" (National Juvenile Law Center).

H. Arthur D. Little, Inc., "Community Alternatives" (1978).

I. New York State Division for Youth, "Alternatives to Secure Detention Handbook."

J. Margaret L. Woods, "Alternatives to Imprisoning Young Offenders: Noteworthy Programs" (National Council on Crime and Delinquency 1982).

K. Youth Corrections, "Response to Request by Social Services Interim Study Committee for Additional Data Concerning Salt Lake County Detention Utilization" (1979).

L. National Council on Crime and Delinquency, "Utah Second District Juvenile Court Study, Vol. I."

M. Institute of Judicial Administration and American Bar Association, "Juvenile Justice Standards Relating to Interim Status: The Release, Control, and Detention of Accused Juvenile Offenders Between Arrest and Disposition (1980).

N. Barry Krisberg, Paul Litsky, Ira Schwartz, "Youth in Confinement: Justice by Geography" (1982).

O. National Advisory Committee for Juvenile Justice and Delinquency Prevention, "Standards for the Administration of Juvenile Justice" (1980).

P. Computer tabulations of information contained in legal and social files of juveniles detained in the Detention Center in

1982.

Q. Austin and Krisberg, "The Unmet Promise of Alternative to Incarceration," 24 Crime and Delinquency 374 (1982).

R. U.S. General Accounting Office, "Report to the Attorney General and the Secretary of Interior: Improved Federal Efforts Needed to Change Juvenile Detention Practices" (1983).

IX. DEFENDANTS' EXHIBITS

A. New Guidelines for Admission to Detention, December 1, 1983.

B. Memorandum of September 8, 1983, Regarding Detention Hearing.

C. Unsafe Offense List.

D. Procedures for Probable Cause and Detention Hearings.

E. Statistical Reports Since New Detention/Arraignment Procedures in Place.

Except as otherwise indicated the authenticity of received exhibits has been stipulated, but they have been received subject to objections, if any, by the opposing party at the trial as to their relevancy and materiality. Copies of all listed exhibits shall be provided to opposing counsel at least ten (10) days prior to trial. If other exhibits are to be offered and their necessity reasonably can be anticipated, they will be submitted to opposing counsel at least seven days prior to trial.

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X. WITNESSES

A. Witnesses for Plaintiffs

In the absence of reasonable notice to opposing counsel to the contrary, plaintiffs may call as witnesses:

1. Judge Regnal Garff
2. Judge John Larson
3. Judge Sharon Peacock
4. Judge Judith Whitmer
5. Referee Richard Burrell
6. Mamie Yee
7. Bob Yeates
8. Ann Nelson
9. Barry Krisberg
10. Ira Schwartz
11. Mack Klein
12. Rosemary Sarri
13. Paul DeMuro
14. Claude Dean
15. Gene Echols
16. Penny Echols
17. Lamar Eyre
18. Jim Walker

B. Witnesses for Defendants

In the absence of reasonable notice to opposing counsel to the contrary, defendants may call as witnesses:

1. Judge Reynal Garff
2. Judge John Larson
3. Judge Sharon Peacock
4. Bob Yeates
5. Bob Nelson
6. Morris Nielson

In the event that other witnesses are to be called at the trial, a statement of their names and addresses and the general subject matter of their testimony will be served upon opposing counsel and filed with the Court at least seven days prior to trial. This restriction shall not apply to rebuttal witnesses, the necessity of whose testimony reasonably cannot be anticipated before the time of trial.

XI. AMENDMENTS TO PLEADINGS

There were no requests to amend pleadings.

XII. DISCOVERY

Discovery is still pending regarding approximately 25 Juvenile Court legal and social files.

XIII. TRIAL INFORMATION

A. The estimated length of trial is four (4) days.

B. The trial to the Court is set for March 5, 1984.

XIV. POSSIBILITY OF SETTLEMENT

Possibility of settlement is considered fair.

DATED: 12-16-83

Copies mailed to counsel 12-20-83cn:
William W. Downes, Jr., Esq.
Mark I. Soler, Esq.
Robert N. Parrish, Asst Atty Gen'l

DAVID K. WINDER
U.S. District Court Judge

Approved as to form:

WILLIAM W. DOWNES, JR. — 12-7-83 Date

MARK I. SOLER — Dec 2, 1983 Date

JAMES R. BELL — 12-2-83 Date

Attorneys for Plaintiffs

ROBERT PARRISH — December 12, 1983 Date

Attorney for Defendants

FILED
UNITED STATES
DISTRICT COURT
DISTRICT OF UTAH
MAR 27 4 20 PM '84
PAUL L. BADGER
CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

D.J.R., and L.A.M., minors, by and through their Next Friend and attorney, WILLIAM W. DOWNES, JR., on their behalf and on behalf of all others similarly situated,

Plaintiffs,

vs.

THE HONORABLE ARTHUR GRANT CHRISTEAN, THE HONORABLE SHARON PEACOCK, and THE HONORABLE REGNAL W. GARFF, JR., Second District Juvenile Court Judges, in and for Salt Lake County, State of Utah,

Defendants.

Civil No. C-82-0811W

CONSENT DECREE

This is a civil rights action for declaratory, injunctive, and other equitable relief, brought by juveniles confined in the Salt Lake Detention Center ("Detention Center") in Salt Lake City, Utah. The Complaint in this action was filed August 27, 1982. The plaintiffs, on behalf of themselves and a class of juveniles similarly situated, alleged that the defendants violate their rights to due process of law and equal protection of the laws (1) by detaining them at the Detention Center without a prompt judicial determination of probable cause and (2) by detaining them at the Detention Center pursuant to Section 78-3a-30 Utah Code Annotated (1953) and Rules 8, 11, and 13 of the Utah State Juvenile Court Rules of Practice and Procedure but without adequate constitutional safeguards to prevent unnecessary and punitive incarceration in the absence of any adjudication of guilt. The defendants answered, admitting that they do not afford probable cause hearings to detained juveniles, but denying that their detention practices violate plaintiffs' constitutional rights.

By order dated February 15, 1983, this Court granted class certification on a provisional basis subject to further order from the Court. The class consists of those juveniles who have been, are now, or in the future will be confined at the Detention Center.

While neither admitting nor denying any allegations of fact or legal liability, the parties have now agreed to the entry of a Consent Judgment resolving plaintiffs' claims regarding prompt judicial determinations of probable cause. Therefore, based upon the stipulation and agreement of all parties to this action, by and through their respective counsel, and based upon all matters of record in this case, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over this matter.

2. The named plaintiffs in this action are D.J.R. and L.A.M., minors, suing by and through their Next Friend, WILLIAM W. DOWNES, JR.

3. The defendants in this action are THE HONORABLE ARTHUR GRANT CHRISTEAN, THE HONORABLE SHARON PEACOCK, and THE HONORABLE REGNAL W. GARFF, JR., Second District Juvenile Court Judges in and for Salt Lake County, State of Utah.

4. This action is properly maintained as a class action under Rule 23(b) of the Federal Rules of Civil Procedure.

5. The plaintiff class consists of:

All juveniles who have been, are now, or in the future will be confined at the Salt Lake Detention Center.

6. Defendants will, on or before June 1, 1984, implement the following procedure for determining probable cause that a juvenile detained in the Detention Center committed the offense(s) alleged to have been committed:

a. A probable cause/detention hearing will be held within 48 hours of the juvenile's admission to Detention, excluding Sundays and holidays. § 78-3a-30(2) Utah Code Annotated.

b. The Juvenile Court Judge or referee will make the determination whether there is probable cause to believe the alleged offense was committed and that the detained juvenile alleged to have committed the offense did commit it.

c. The judge or referee must base the finding of probable cause upon sworn statements or testimony of persons having direct knowledge of the facts or circumstances surrounding the offense(s) which the juvenile is alleged to have committed or upon sworn statements or testimony of persons who have been informed of the facts or circumstances surrounding the offense(s) which the juvenile is alleged to have committed by informants having direct knowledge of such facts or circumstances.

If the finding of probable cause is based only on information from informants, the sworn statements or testimony relating the information shall set forth the underlying fact or circumstances from which the informants concluded the offense(s) was committed and that the juvenile committed the offense(s) and shall set forth circumstances demonstrating the credibility or reliability of the informants.

d. If the judge or referee finds that probable cause has not been established, the allegation against the juvenile shall be found to be unsupported by probable cause and the juvenile shall be released from the Detention Center.

e. If the judge or referee finds there is probable cause to believe the offense(s) alleged was committed and that the juvenile committed it, the judge or referee shall immediately proceed to inquire into the need for further detention.

7. Defendants will, on or before July 1, 1984, adopt rules and procedures governing detention hearings in cases in which a juvenile is alleged to have committed an offense. Detention will

only be permitted if the judge or referee determines that secure placement of the juvenile is required to protect the juvenile from harm, to protect persons in the community from being harmed or to secure the attendance of the juvenile at future court proceedings.

a. Detention to protect the juvenile from harm or to protect persons in the community from being harmed, shall be permitted only as follows:

(1) The nature and seriousness of the alleged offense:

(a) If a juvenile is alleged to have committed an offense specified in the list of OFFENSES WHICH ALONE MAY JUSTIFY ORDER FOR FURTHER DETENTION AT THE DETENTION-PROBABLE CAUSE HEARING (attached hereto as Appendix A), the juvenile may be detained without consideration of any other facts or circumstances. Detention is not mandated, however, even upon establishment of probable cause that the juvenile committed an offense listed in Appendix A. The judge or referee may determine whether to detain the juvenile after consideration of the facts and circumstances listed in paragraph 8.

(b) If a juvenile is alleged to have committed an offense listed in the UNSAFE OFFENSE LIST (attached hereto as Appendix B), the juvenile may be detained if the judge or referee finds, after reviewing the relevant facts and circumstances, that detention is required to protect the juvenile from harm and/or protect persons in the community from being harmed by the juvenile.

(c) If a juvenile is brought to detention solely by reason of one of the following facts or circumstances, the juvenile may not be detained in the Detention Center:

(i) Alleged to be ungovernable or runaway;

(ii) Taken into custody for neglect, abuse, abandonment, dependency, or requiring protection for any other reason;

(iii) Alleged to have committed a status offense (an offense which would not be a crime if committed by an adult);

(iv) Taken into custody solely for an "endangering condition," U.C.A. 78-3a-29(c);

(v) Taken into custody for attempted suicide.

(d) No juvenile under the age of ten years may be detained in the Detention Center.

(e) If a juvenile is alleged to have committed an offense not listed in Appendix A or Appendix B, the juvenile may be detained only if the juvenile may be detained under 7.a.(2) or 7.b. below.

(2) The juvenile's past offense record, as demonstrated by juvenile court files:

(a) A juvenile may be detained if the juvenile has two adjudications for offenses arising out of separate criminal episodes listed in the UNSAFE OFFENSE LIST within the past year and the judge or referee finds that the juvenile's past record and the other relevant facts and circumstances listed herein require detention to protect the juvenile from harm and/or to protect the community from being harmed by the juvenile.

(b) A juvenile may be detained if the juvenile is currently alleged to have committed an offense listed in Appendix C and if the juvenile has three or more adjudications within the past year for offenses listed in either Appendix B or Appendix C.

b. Secure placement to secure the attendance of the juvenile at future court proceedings shall only be permitted as follows:

(1) A juvenile may be detained if the juvenile is an escapee from a secure institution or other secure placement facility to which the juvenile was committed under a prior adjudication of a juvenile court.

(2) A juvenile may be detained if the juvenile has failed to appear at a juvenile proceeding within the past year and the judge or referee finds that secure placement is necessary to ensure the juvenile's appearance at future court proceedings.

(3) A juvenile may be detained if the juvenile has been verified to be a fugitive from another jurisdiction, an official of which has formally requested that the juvenile be placed in detention.

(4) A juvenile may be detained if the juvenile has voluntarily absented himself or herself for at least 48 hours from three or more non-secure placements, including but not limited to court-ordered placements, within the preceding year.

8. In determining whether to detain a juvenile or continue a juvenile in detention in accordance with paragraph 7, a judge or referee may consider the juvenile's background and circumstances, including:

a. Family support/supervision and control;

b. School involvement--attendance, student-faculty relations;

c. Beneficial/supportive community relationship;

d. Mental and emotional state/factors;

e. Characterological or pathological factors;

f. Other factors.

9. Defendants will, on or before July 1, 1984, revise Form 7, currently entitled "DETENTION/SHELTER HEARING FINDINGS AND ORDER," in a manner consistent with this Consent Decree.

10. Defendants will, upon adoption of the rules and procedures reflected in this Consent Decree, follow these practices and procedures within the Second District Juvenile Court.

11. Defendants will, on or before July 1, 1984, issue "Guidelines for Admission to Detention" consistent with the terms of this Consent Decree. Said "Guidelines" shall be directed to intake and admissions desk personnel at the Detention Center.

12. Defendants will forward copies of the daily population reports of the Salt Lake County Detention Center on a monthly basis to the attorneys for plaintiffs from July 1, 1984, until June 30, 1985.

13. Plaintiffs reserve the right to request such attorneys' fees and costs as this Court deems appropriate, and defendants reserve the right to oppose such request.

14. No just reason exists for delay in entering this Consent Decree as to all defendants in accordance with its terms.

15. The agreement set forth herein constitutes a fair and reasonable resolution of plaintiffs' claims regarding prompt judicial determinations of probable cause, and is therefore approved by this Court.

DATED this 27 day of March, 1984.

DAVID K. WINDER
United States District Judge

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Robert N. Parrish, Asst. Atty Gen'l

## APPENDIX A

### OFFENSES WHICH ALONE MAY JUSTIFY ORDER FOR FURTHER DETENTION AT THE DETENTION-PROBABLE CAUSE HEARING

#### ARSON

1. ARSON5 Aggravated Arson - damages a habitable structure or vehicle when any person not a participant is in the same.

#### ASSAULTS

1. AGST23 Aggravated Assault
2. AGSXA1 Aggravated Sexual Assault

#### ATTEMPTS

1. ATMP11 Attempt to commit a Capital Felony
2. ATMP22 Attempt to commit a 1st Degree Felony against person

#### BOMBS-CATASTROPHES-RIOTS

1. BOMBD2 Bombing - person injured
2. CAUCI2 Catastrophe - knowingly caused - injury to persons
3. RIOT39 Riot resulting in injury or substantial property damage or arson or armed with a deadly weapon.

#### BURGLARY

1. AGBUA1 Aggravated Burglary - causes physical injury to non-participant or threatens the immediate use of a dangerous or deadly weapon.
2. AGBUB3 Aggravated Burglary - armed with a deadly weapon or possesses or attempts to use any explosive or deadly weapon.

#### CONSPIRACIES

1. CNSP11 Conspire to commit Capital Felony. No overt act required.
2. CNSP22 Conspire to commit 1s Degree Felony against person.

#### EXTORTION-ROBBERY

1. EXTRA3 Extortion - threatens physical harm - value of property extorted is more than $250 to $1,000.
2. EXTRTA Extortion - threatens physical harm - value of property extorted is from more than $100 to $250.
3. EXTR42 Extortion - threatens physical harm - value over $1,000.
4. RBERY1 Aggravated Robbery - 1st Degree Felony

## HOMICIDES

1. MNSLT2 Manslaughter
2. MRDR10 Murder - First Degree
3. MRDR21 Murder - Second Degree

## KIDNAP

1. AGKD21 Aggravated Kidnaping
2. KDNCD1 Child Kidnaping - victim under 14 years

## OBSTRUCTING GOVERNMENTAL OPERATIONS

1. ESCP18 Escape from official custody by use of force, threat or deadly weapon.

## SEX OFFENSES

1. AGSXA1 Aggravated Sexual Assault
2. RAPE21 Rape of person 14 years or older.
3. RAPCD1 Rape of a child under 14 years.
4. RAPOB1 Object Rape - victim 14 years or over.
5. RAPOC1 Object Rape upon a child under 14 years of age.
6. AGSAC1 Forcible Sexual Abuse upon a child under 14 years of age accompanied by an aggravating factor specified in 76-05-404.1(3)(a) or (b) or (I).

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## APPENDIX B

## UNSAFE OFFENSE LIST

JUVENILES BOOKED IN DETENTION FOR THE FOLLOWING OFFENSES MAY BE DETAINED IF THE JUDGE OR REFEREE FINDS THAT DETENTION IS REQUIRED TO PROTECT THE JUVENILE FROM HARM AND/OR PROTECT PERSONS IN THE COMMUNITY FROM BEING HARMED BY THE JUVENILE.

## ASSAULTS

1. AGST23 Aggravated Assault
2. AGSXA1 Aggravated Sexual Assault

## ATTEMPTS

1. ATMPAA Attempt to commit a 3rd Degree Felony against person
2. ATMP11 Attempt to commit a Capital Felony
3. ATMP22 Attempt to commit a 1st Degree Felony against person
4. ATMP33 Attempt to commit a 2nd Degree Felony against person

## BOMBS - CATASTROPHES - RIOTS - WEAPONS

1. BOMBD2 Bombing - person injured
2. CAUCI2 Catastrophe - knowingly caused - injury to persons
3. PSWEPG Possession of dangerous weapon with intent to assault another.
4. RIOT39 Riot resulting in injury or substantial property damage or arson or armed with a deadly weapon.
5. SBTGE8 Sabotage
6. WEAPEH Exhibiting a dangerous weapon in any angry manner in presence of two or more persons. (Knife or Gun)
7. WEAPUH Using a dangerous weapon in any fight or quarrel. (Knife or Gun)

## BURGLARY

1. AGBUA1 Aggravated Burglary - causes physical injury to non-participant or threatens the immediate use of a dangerous or deadly weapon.
2. AGBUB3 Aggravated Burglary - armed with a gun or knife or possesses or attempts to use any explosive.
3. BURG25 Burglary - where burglary involved entry into a habitable dwelling.

## CONSPIRACIES

1. CNSPAA Conspire to commit 3rd Degree Felony against a person.
2. CNSP11 Conspire to commit Capital Felony. No overt act required.
3. CNSP22 Conspire to commit 1st Degree Felony against person.
4. CNSP33 Conspire to commit 2nd Degree Felony against person.

## DESTRUCTION OF PROPERTY - ARSON - RECKLESS/BURNING (FIRESETTING)

1. ARSN2D Arson - value exceeds $1,000.
   ARSN16 Arson - value exceeds $5,000.
2. ARSON3 Aggravated Arson - damages a habitable structure or vehicle when any person not a participant is in the same.
3. RKLBAA Reckless Burning - endangers human life, or having started a fire and knowing it is spreading and will endanger human life fails to take reasonable measures to put it out or control it or to give a prompt alarm.

## DIRECT BOLDS - DETENTION

1. CTYCMZ Circuit or J.P. Court Commitment. Child may be held if detention is authorized by guidelines.
2. CTYWRZ Circuit or J.P. Judge Warrant. Child may be held for detention if detention is authorized by guidelines.

## DRUGS (SALE OF)

1. NRCSAG Distribution of narcotic drug for value.
   NRCSB9
   NRCSL7

## EXTORTION - ROBBERY

| | | |
|---|---|---|
| 1. | EXTRA3 | Extortion - threatens physical harm - value of property extorted is more than $250 to $1,000. |
| 2. | EXTRTA | Extortion - threatens physical harm - value of property extorted is from more than $100 to $250. |
| 3. | EXTR42 | Extortion - threatens physical harm - value over $1,000. |
| 4. | RBERY1 | Aggravated Robbery - 1st Degree Felony. |
| 5. | ROBER7 | Robbery - Federal Offense Bank Robbery. |

## HOMICIDES

| | | |
|---|---|---|
| | AUTOH3 | Automobile Homicide |
| 2. | MNSLT2 | Manslaughter |
| 3. | MRDR1[illegible] | Murder - First Degree |
| 4. | MRDR21 | Murder - Second Degree |
| 5. | MYHEM2 | Mayhem |

## JUVENILE

| | | |
|---|---|---|
| 1. | PCKUP2 | Pickup Order, child may be held if authorized by guidelines. |
| 2. | ALIENJ | Non-resident Alien - Hold for Immigration Service. If not charged with a criminal offense, place on a direct hold. Otherwise, include on Detention Docket. |

## KIDNAP - TERRORISTIC THREATS

| | | |
|---|---|---|
| 1. | AGKD1C | Aggravated Kidnaping - victim not released. |
| 2. | AGDO21 | Aggravated Kidnaping - victim released. |
| 3. | DTAIN8 | Unlawful Detention |
| 4. | KDNAP2 | Kidnaping |
| 5. | KDNCD1 | Child kidnaping - victim under 14 years |

## OBSTRUCTING (JUSTICE) GOVERNMENTAL OPERATIONS

| | | |
|---|---|---|
| 1. | AWOL-H | Absent Without Official Leave from the Military. |
| 2. | ESCAW7 | Aiding in an escape from official custody by providing a deadly weapon which may facilitate such escape. |
| 3. | ESCP18 | Escape from correctional facility by use of force, threat or deadly weapon. |
| 4. | FLGHTG | Interstate Flight to Avoid Prosecution. |
| 5. | OBJSC8 | Obstructing Justice where a capital offense or felony of first degree has been committed. |

## TRAFFIC

| | | |
|---|---|---|
| 1. | HR1P1H | Leave Accident Scene - personal injury. |
| 2. | HR4FD6 | Fleeing a Police Officer causing damage to police property or substantial damage to property of another. |

| | | |
|---|---|---|
| 3. | HR4F13 | Fleeing a Police Officer causing bodily injury to another. |
| 4. | HR4FS9 | Fleeing a Police Officer - 90 MPH or over or while doing so leaves the state of Utah. |

**SEX OFFENSES**

| | | |
|---|---|---|
| 1. | AGEXP8 | Aggravated Exploitation of Prostitution |
| 2. | AGSXA1 | Aggravated Sexual Assault |
| 3. | RAPCD1 | Rape of person under 14 years. |
| 4. | RAPS21 | Rape of a person 14 years or over. |
| 5. | SDMY11 | Sodomy upon a child - victim under 14. |
| 6. | SDMY21 | Forcible Sodomy - victim 14 years or over. |
| 7. | SXABS2 | Forcible Sexual Abuse - victim 14 or over. |
| 8. | RAPOB1 | Object rape - victim 14 years or over. |
| 9. | RAPOC1 | Object rape upon a child under 14 years of age. |
| 10. | AGSAC1 | Aggravated sexual abuse upon a child under 14 years of age. |
| 11. | SXABC2 | Sexual abuse upon a child under 14 years of age. |

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**APPENDIX C**

**A JUVENILE MAY BE DETAINED IF CURRENTLY ALLEGED TO HAVE COMMITTED AN OFFENSE ON THIS LIST AND THE JUVENILE HAS THREE OR MORE ADJUDICATIONS WITHIN THE PAST YEAR FOR OFFENSES LISTED IN EITHER APPENDIX B OR THIS LIST.**

**HOMICIDE**

| | | |
|---|---|---|
| 1. | NGHOMA | Negligent homicide |

**TRAFFIC**

| | | |
|---|---|---|
| 1. | DI1UIM | DUI - Alcohol |
| | DI2MEM | DUI - Other Drugs |

**SEX OFFENSES**

| | | |
|---|---|---|
| 1. | EXPRS9 | Exploiting Prostitution |
| 2. | PRSTU9 | Interstate Transportation of Prostitute |

Senator HATCH. Let me just ask you, Father Ritter, based on your excellent work at the Covenant House, do you feel that status offenders have an absolute right to freedom from all custody and secure detention facilities no matter what the circumstances?

Father RITTER. No, I do not. I feel that in certain cases, for their own protection, status offenders must be subject to the coercive power of the State lest they be permitted to engage in self-destructive conduct. I firmly support the establishment of very carefully controlled, human, carefully supervised residences where especially young children, 12, 13 years old can be kept in custody while their home situation is carefully examined.

Right now literally thousands and thousands of kids that come to us every year do not have that protection. They are subject to the most incredible kinds of subjugation by pimps on the street, for example.

Senator HATCH. I take it you agree with Father Ritter, Detective McGinniss?

Detective MCGINNISS. Oh, I absolutely agree with Father Ritter, and further I really do not feel that there is a necessity for a great expenditure of funds if funds should be a problem. There are in existence shelters perhaps not as many as we would like, but there are in existence now shelters that could, with a change of policy and an adjustment in the law, function very well as a temporary home situation.

Senator HATCH. Mr. Soler, you disagree, I take it, with Father Ritter?

Mr. SOLER. I disagree. I can tell you that in my experience, and I have worked in many communities where the problem of runaways and status offenders have been there, the problem has usually been that the proper kind of alternative, nonsecure, community-based facilities have not been developed.

There are many models of alternative, nonsecure placements which have been developed. I believe one of the other witnesses at the hearing, Mr. DeMuro, will talk about that. But in my experience in resolving litigation that we have brought, by careful development of nonsecure alternatives, all status offenders can be removed from secure facilities.

Father RITTER. If I may react, I could not disagree more. A nonsecure facility is nonsecure, and there is nothing to prevent a child from walking away from those facilities if they really wish to, and our experience which is 16 years of direct child care with over 50,000 street kids, we know that these children do have the ability to leave these so-called nonsecure facilities.

In fact, a nonsecure facility is an open facility and does not provide the protection these children need.

Senator SPECTER. Mr. Chairman, I just have one question for Father Ritter, and I think we see eye to eye on this. The only objective that the legislation seeks to achieve when it comes to status offenders is that the status offender not be placed in jails.

The legislation looks to have residential facilities, but they should be secured. There is no issue as to the security or the fact that the child who may be a runaway, where necessary, should not be permitted to leave. If there is a neglected or dependent child who may be inclined to leave but who needs care, he should be in a

facility where someone is present to see to it that he gets the kind of care he needs as opposed to being placed in a jail cell.

From your testimony, as I understand it, you would prefer to see status offenders not in jail——

Father RITTER. Oh, absolutely yes.

Senator SPECTER. But in residential centers where there is appropriate security so that runaways cannot run away again or so that dependent children get the kind of care they need. It is just a question of where it is.

Father RITTER. Agreed. Two things. We think secure facilities are required for a very small percentage, less than 1 percent of runaway kids, but we do think in that small percentage of cases secure facilities are necessary.

But, Senator, I do think that a careful reading of this proposed legislation really excludes any kind of secure facility. There is very little that I could see in the legislation that permits a secure facility of any kind.

Senator SPECTER. Well, that is a matter of statutory construction, but that is something we can certainly cure. I can tell you as the draftsman that that is not the intent. What we are looking for is to have status offenders not in jails but to have them in residential centers which can be secure in appropriate cases, the limited percentage that you refer to.

Thank you.

Senator HATCH. I think your testimony has been very helpful, all of you. And frankly I trust Senator Specter to make sure this bill be both constitutional and drafted in the most constructive way. Your testimony has been very helpful, all of you. Thank you for being with us. I am sorry to have to rush you along.

We will call our next witnesses. Ms. Barbara Fructer and her two young companions, Lisa and Kim, to come to the table. Ms. Fructer is the executive director of the Juvenile Justice Center of Pennsylvania. I would like to hear her statement and then have her introduce Lisa and Kim.

Ms. Fructer, I have to leave. Senator Specter, by necessity, will have to shorten the time for testimony for the remaining two panels, but we will leave that up to you as to how you do that.

Senator SPECTER. Thank you very much, Mr. Chairman.

We will do it the way you put five elephants in a coop, three in the front and two in the back. I am obligated to preside at 4 and it takes 5 minutes to get there so we will just have to have the essence of the testimony with the written statements being provided or any supplement provided.

Ms. Fructer, I welcome you here. I know your long-standing work as a contributor in juvenile justice. You have been an outstanding community leader in Pennsylvania and the Nation, and besides that you are the wife of one of my good friends, Leonard Fructer, and a frequent squash companion. So I welcome you here on many grounds. The floor is yours, Ms. Fructer, but we have very limited time.

**STATEMENT OF BARBARA FRUCTER, JUVENILE JUSTICE CENTER OF PENNSYLVANIA, ACCOMPANIED BY LISA AND KIM**

Ms. FRUCTER. I have a 4-minute introductory message that I would like to give and then I would like you to meet at least two of the friends that I brought with me who are residents of the Juvenile Justice Center Emergency Shelter Care. I brought these youngsters with me because at least some of them could be called chronic runaways, and at JJC Emergency Shelter they do not run any more and we do not have the kind of security that has been discussed today, and I just want to give a little background to this situation by saying that I could not argue with the distinguished witnesses that said juveniles have a right to protection and the State has a responsibility to provide those services and facilities which can reasonably provide protection.

But I would not, as has recently been done, equate protection with incarceration. Not too long ago in Pennsylvania in an upstate county a 14-year-old juvenile was passing through on Route 80. She may have been on her way to Florida and she was picked up and under court order, she was held in the jail in that county, and she was first raped by the deputy sheriff and then she was raped by the inmates.

It was only a 24-hour holding and she was, in fact, a runaway, and it was a court order, but there was nobody there protecting her rights or her body or her sanity.

A little while after that, we had a 15-year-old boy who was held as a runaway in detention and he hung himself with his belt and he left a note and he said, "I did not hurt nobody."

After these incidents, some of the citizens of our State looked into our jails of our State at this time, and we saw that there were over 3,000 juveniles held in our jails. Most of them were runaways, one-third of them were under the age of 12, and one-third of them were held over 30 days.

Senator SPECTER. Ms. Fructer, I had to hurry you but I am going to have to leave here in just a very few minutes, like 4 or 5 minutes. Do you want to introduce the young people to have them say a word? If so, I think you better do that now.

Ms. FRUCTER. This is Lisa and this is Kim, and if you would like to ask them some questions about why they have stopped running, even though they are not locked in the Youth Study Center or in a mental facility or in Spaford in New York, they might want to answer.

Senator SPECTER. Let me ask Lisa if you were ever held in a facility were you were mistreated or abused?

Ms. LISA. The Youth Study Center.

Senator SPECTER. Were you abused there?

Ms. LISA. Just they leave you locked in a room. If you are going to get into a fight with somebody and the somebody beats you up and it is not your fault, they lock you in a room.

Senator SPECTER. Kim, how about you? Have you ever been abused in a detention facility?

Ms. KIM. Yes, I was in the Youth Study Center.

Senator SPECTER. What happened to you, if anything?

Ms. KIM. I had gotten into an argument with one of the female staff there, and it became physical.

Senator SPECTER. Anything else?

Ms. KIM. No.

Senator SPECTER. Ms. Fructer, who is the young gentleman with you? Do you wish to have him speak?

Ms. FRUCTER. No. Jim is part of our staff. We have two young men here.

Senator SPECTER. Ms. Fructer, are you in favor of Senate bills 520 and 522?

Ms. FRUCTER. We support Senate bill 520 because we do not believe that children who have not committed any crimes should be incarcerated like criminals. We do not know of any type of incarceration or security that improves self-image. We do not know of any kind of incarceration or middle holding and security that will help a kid go back to the kind of home that Father Ritter described where there is incest, where there is abuse.

Senator SPECTER. Are you prepared to testify on Senate bill 522?

Ms. FRUCTER. Senate bill 522 should build a wall of separation between juveniles and holding kids in jails because once you break that wall for any exceptions whatsoever you do not have a wall. You have a leaky dam, and the intent of S. 522 is to correct.

Senator SPECTER. Ms. Fructer, we thank you very much for coming. We realize that it has been at the last minute, and we have tried to find some room. We will see that you are invited to a later session where we will have more time for you. Thank you very much.

Ms. FRUCTER. Thank you.

Senator SPECTER. I would like to now call the last panel. Ms. Judith Johnson from the National Coalition for Jail Reform, and Mr. Paul DeMuro from the Division of Youth Services, Essex County, NJ.

I very much regret that we have so little time. We have already made use of your statement from the National Coalition for Jail Reform, and we appreciate the statement which you have provided, Mr. DeMuro. Both of those statements will be made a part of the record in full.

Let me call on you, albeit briefly, to give us the essence of your thinking on these two pending bills.

**STATEMENTS OF JUDITH JOHNSON, NATIONAL COALITION FOR JAIL REFORM, AND PAUL DeMURO, DIVISION OF YOUTH SERVICES, ESSEX COUNTY, NJ**

Ms. JOHNSON. I had some other remarks to make that were not in my written testimony, but given the amount of time, I just want to stress that 40 national organizations which represent sheriffs, counties, the American Bar Association, the police, State court judges—a broad range of organizations which include all parts of the criminal justice system, all parts of the law enforcement system—who all agree unanimously that juveniles should not be held in jails.

We have policy on that. We have been working on it for 4 years, and we are unanimous in it. So this is a motherhood issue of removing juveniles from jail.

Senator SPECTER. Do they go so far as to say that Federal legislation ought to be passed which would make that mandatory?

Ms. JOHNSON. You cannot have 40 organizations in a coalition lobbying on one bill together. I could work with staff on how you would implement that, but we all agree that juveniles should not be held in jail. Some of the organizations would, obviously, like to see money tied to it so that you could help the counties remove the juveniles from jail.

Senator SPECTER. Well, to the extent we could get their support, that would be very, very helpful.

But speaking for yourself, Ms. Johnson, you do support both 520 and 522?

Ms. JOHNSON. I speak for the coalition. The coalition does not endorse particular legislation. We endorse the concept of removing juveniles from jail.

Senator SPECTER. Mr. DeMuro, what is your view on these bills?

Mr. DEMURO. Senator, it is good to be here, and I will keep my remarks as brief as possible. I support both pieces of legislation. The jail removal bill, I think, needs tightening up. In my written remarks, I comment that kids who are likely to commit harm to other kids in detention centers and serious offenders could be handled by the States' waiver provisions.

For rural States, there are methods which I have outlined in my written testimony to help effect complete jail removal.

In terms of the other bill, I am frankly a little bit confused by some of the remarks today. I support the complete removal of status offenders from detention centers, secure detention centers, juvenile detention centers.

That does not mean there would not be resources, residential care resources for those status offenders. In addition in-home services for most status offenders, much like we have developed both in Essex County, NJ, have proved very effective.

I think the staff perhaps needs to work a little more thoroughly on that bill. It was interesting to me that Father Ritter said his program permits kids to leave and it is a good program. I know of no 60-day locked program for status offenders which is effective.

I have provided to staff a variety of alternative program information that, if implemented, ought to preclude status offenders, from being placed into secure detention.

[Material submitted for the record follows:]

PREPARED STATEMENT OF JUDITH JOHNSON

Mr. Chairman and members of the subcommittee, I am pleased to testify today, on behalf of the National Coalition for Jail Reform, regarding the removal of juveniles from adult jails and lockups.

The National Coalition for Jail Reform is made up of 40 national organizations including the National Sheriffs' Association, the National Association of Counties, the American Bar Association, National Center for State Courts, the American Correctional Association and the Police Foundation.

The Coalition serves as a forum for very diverse groups in the criminal justice field to discuss issues around jails, to agree on positions and to work together to implement the needed changes. All 40 organizations have unanimously adopted policy which states that "No Juveniles Should be held in an Adult Jail."

Holding juveniles in adult jails is such a widespread and serious problem that it necessitated action at the federal level to assist state and local governments in removal efforts. As you know, in 1980, the Juvenile Justice and Delinquency Prevention Act was amended by Congress, to require that states participating in the Act remove all juveniles from adult jails by 1987. In spite of federally funded efforts to remove juveniles from adult jails, an estimated 300,000 juveniles are held in adult jails per year, according to the Bureau of Justice Statistics 1982 Survey of Jail Inmates. This survey, however, did not include lockups or short-term holding facilities where many juveniles are also held.

The numbers of juveniles being held in adult jails is further illustrated by the Office of Juvenile Justice and Delinquency Prevention's Annual Monitoring Reports, which are broken down by states. Each state reports the number of juveniles being held in adult jails: all status or non-offenders held for any period of time and delinquent juveniles held for over 6 hours:

- For 1982, California reported 5,552 juveniles held in adult jails and lockups, 4,801 of which were status or non-offenders.
- For 1982, Nebraska reported 2,804 juveniles held in adult jails.

- Wisconsin reported 2,657 juveniles held in adult jails in 1982.
- Colorado reported 2,046 juveniles held in adult jails in 1982 (excluding Indian youth).
- New Mexico reported 2,015 juveniles held in adult jails during the months of February, May and August of 1982.

In Wyoming, a state not participating in the Juvenile Justice and Delinquency Prevention Act, the Report of the Governor's Committee on Troubled Youth (December 1982), roughly estimated that 4,159 of the 6,420 juveniles arrested in 1982 were held in adult jails.

Nearly 25 percent of the youngsters held in adult jails are accused of status offenses -- truancy, running away from home, etc., acts which if committed by adults would not be a crime -- or of no offense at all. Only five to ten percent have been charged with violent crimes.

Incarceration in adult jails can have severely damaging psychological effects on adolescents. Many youths suffer emotional and mental harm that affects their behavior long after they leave jail. In adult jails, juveniles can fall prey to adult offenders, being raped or assaulted or educated in criminal behavior.

- In Ohio, a 15 year old female honor student, with no previous arrest record, held in jail for taking her parents car without their permission, was sexually assaulted by the jailer and two 20 year old male prisoners. The jailer later pleaded guilty to criminal charges of sexual battery and contributing to the delinquency of minors and was sentenced to 30 days in state prison.

- In Idaho, Christopher Peterman was jailed for contempt of court for failing to pay $73 in traffic fines. He was found unconscious by guards in the jail's exercise yard, where he and his cellmates were left unsupervised for nearly two hours. According to authorities, Peterman was the victim of a beating during which he was tortured for 4 and a half hours.

his five 17-year-old cellmates were charged with first degree murder.

A study by the Children's Defense Fund documented other horrendous results of housing juveniles with adults:

- A sixteen-year old boy was confined with a man charged with murder -- who raped the boy three times;
- A sixteen-year old boy was confined with five men, among them: a man charged with murder; an escaped prisoner; and a child molester charged with molesting three boys.
- Bill (age 12), Brian (age 13) and Dan (age 14) were suspected of stealing some coins from a local store. They were placed in a jail cell with one older boy and two men. The first night, the men decided to have a little fun. As Billy and Brian lay sleeping, the men placed matches between Billy's toes and in Brian's hands, lit them and watched them burn, laughing as the boys awoke in pain and horror. The second night the boys, too afraid to sleep, lay awake listening to the men talk about how they hadn't had a woman in a long time and how these boys would do just fine.... The men tore off the boys' clothing and then, one by one, each of the men forcibly raped the three brothers.

  Two nights later, the abuse was repeated; the men pured water on Dan's mattress, filled Billy's and Brian's mouths with shaving cream, stripped the boys naked and raped them. Finally, after five days of terror in jail, the boys were brought before a judge....

  The judge allowed Dan to go home...but Billy and Brian, awaiting transfer to the Department of Youth Services, were sent back to the county

> jail. Upon their return, the boys begged not to be put in a cell with adults. But the trusty ignored their pleas and led them back to the same cell they had been in before, where the same men waited for them.

Rarely is there enough staff for adequate supervision to guard against physical or sexual assaults on juveniles in adult jails. Virtually no jail staff are trained in dealing with stress among children or with emotionally disturbed young people. When attempts are made to separate juveniles from adult offenders, the juvenile often ends up in the isolation cell. Alone and confused, many attempt suicide. For every 100,000 juveniles placed in adult jails, 12 will commit suicide. This is eight times higher than the rate of suicide in secure juvenile detention centers. According to Allen Breed, former Director of the National Institute of Corrections:

> "Jails and prisons are places in which children will be assaulted, molested and emotionally damaged. There has never been a jail in which experience demonstrated that juveniles and adults could be separated. The adult felon will find some way to make contact with juveniles placed in jail and for nefarious reasons. No thinking judge who has ever closely inspected a jail or prison could bring himself to deliberately assign a child to an experience that emphasizes brutality, abuse and sadism."

As long as the jailing of juveniles is permitted, stories of abuse, such as those you've just heard will continue. This alone is sufficient reason to stop the jailing of juveniles, but there are other practical reasons as well. In addition to the cost of human suffering that occurs when youth are subjected to the jail experience, communities will face the legal costs of suits resulting from jailing juveniles. In 1982, a U.S. District Court decision in Oregon, D.B., et al v. Tewksbury, 545 F. Supp. 896 (1982) held... "A jail is not a place where the state can constitutionally lodge its children under the guise of parens patriae. To lodge a child in an adult jail pending adjudication of criminal charges against

the child is a violation of that child's due process rights under the Fourteenth Amendment to the United States Constitution." As juveniles continue to be held in adult jails, we can expect to see more court involvement in this issue. It makes sense to concentrate our efforts now on removing all juveniles from adult jails before the courts find it necessary to further intervene.

Aside from the obvious moral and legal implications of jailing juveniles, there are the exhorbitant cost to local governments of jail incarceration. According to the National Institute of Corrections, the average cost of housing one person in jail for one year is $14,000. This works out to a cost of approximately $40 per person, per day. In addition to being more humane, community based services are generally considerably less expensive than jail incarceration. The Jail Removal Cost Study, published by OJJDP in May of 1982, projected an average daily cost of $22.17 for community supervision of a juvenile. Since a large percentage of the jailed juveniles are in for minor offenses or status offenses, they seldom pose a real danger to the community. Greater utilization of community based programs for these juveniles can thus reduce, not increase, the costs to local governments.

Jail is not the appropriate response to our nation's youth who come in contact with the law. Other alternatives exist in most communities that can serve to deter, treat, or "punish" juveniles as needed. As the President of the National Sheriffs' Association, Sheriff Richard J. Elrod, Cook County, Illinois, stated in his article entitle, "Removal of Juveniles from Adult Jails,"

> "...let me emphasize that permitting juveniles to escape retribution or punishment is not being advocated. What is being advocated is the elimination of unnecessary detention, especially detention in the same jail with adult prisoners."

Sheriff Elrod and representatives of other Coalition member organizations all agree that there are a number of more appropriate placements for juveniles, outside the local jail. There are two basic alternatives to the jailing of juveniles: secure juvenile detention and non-secure supervision.

Secure detention for juveniles is the more costly and restrictive of the two options available for responding to juveniles in trouble. Juvenile detention facilities can provide the secure structure that some youths may require, while also offering specialized programs designed for young people. Use of secure detention should be routinely assessed, however, to ensure that only those youth requiring secure confinement are detained. Status and other non-offenders generally can be much better served in less restrictive programs. Local governments should take the steps necessary to ensure that as many youth as possible are retained in the community where they have access to other social services and can interact with their families.

There are numerous community based alternatives to jailing juveniles that protect the rights and well-being of the juvenile, as well as the safety of the community. Most of the alternatives are far less costly than the use of cell space in an adult jail or even in a secure detention facility for juveniles. These alternatives include:

- Use of Summons or Citations: When the police arrest a juvenile, instead of taking him or her to jail, they may issue a ticket/summons/citation. The juvenile is released to his or her home and notified when and where to appear in court.
- Emergency Shelter Services: Emergency shelter care services provide temporary residential placements for youths who do not require locked security but who are unable to stay in their homes or who do not have homes. Emergency shelter services can be provided in a variety of ways including programs specifically created to provide emergency services, group homes, runaway shelters that are capable of meeting crisis needs, or licensed "host homes" in the community.
- Runaway Programs: Runaway programs are variations on group residences that specifically serve runaways or children who have been forced to leave home. These

programs provide short-term residential care followed by refarrals for long-term care as needed. Most programs also provide counseling and linkages to other services.

- Home Detention: Home detention programs permit juveniles to reside in their homes, under daily supervision from a caseworker, pending their court appearance.
- Group Home Detention Programs: Group homes are generally community residences used to house between 7 and 12 juveniles. A groups home detention program provides its residents with counseling, concerned adult supervision and an alternative living situation.
- Community Advocate Programs: Community advocate programs are a variation on home detention programs. Community advocates are adults who spend a number of hours a week with juveniles who are in trouble. In one-to-one relationships, the advocate functions as a positive role model, friend, problem solver, authority figure and provides supervision and guidance.
- Family Crisis Intervention Programs: Trained counselors provide intervention services to juveniles and their families who are in crisis. Services may include crisis intervention, counseling, training in problem solving skills, enrollment or re-enrollment in in school, homemaking assistance and financial planning, as well as referrals to other services. These programs focus on family problems rather than just the problems of the juvenile and are different from typical family counseling provided through a mental health center in that services are short-term and are available on a 7-day, round-the-clock basis.
- Transportation Services: The provision of transportation can be vital to keeping young people out of jail. It may be necessary, particularly in rural areas, to travel long distances to transport juveniles

to appropriate detention facilities or to alternative placements. Cooperative agreements between intake specialists and law enforcement officers have been developed in several communities to provide transportation for juveniles to a community that has the appropriate services.

The efforts of Congress and the federal juvenile justice agency (OJJDP) to assist local governments to remove juveniles from jail and to promote these alternative to incarceration have had a tremendous impact. This is not the time to stop or reduce those efforts. Thousands of juveniles are still spending time in adult jails and the federal government must not pull back from this crucial issue. Instead, we must pool our resources and efforts, as the 40 members of the National Coalition for Jail Reform are doing, to ensure that in the future no juvenile will suffer the damages of the jail experience.

## Prepared Statement of Paul DeMuro

MR. CHAIRMAN:

MY NAME IS PAUL DeMURO AND I CURRENTLY SERVE AS THE DIRECTOR OF YOUTH SERVICES FOR ESSEX COUNTY, NEW JERSEY. I WANT TO THANK YOU AND YOUR STAFF FOR INVITING ME TODAY TO TESTIFY REGARDING S. 520 AND S. 522.

I APPEAR BEFORE YOU NEITHER AS AN ACADEMIC EXPERT IN JUVENILE JUSTICE, A TRAINED CIVIL RIGHTS LAWYER OR PRIVATE CITIZEN ADVOCATE. I DO, HOWEVER, HAVE 15 YEARS OF DIRECT EXPERIENCE AS A PRACTITIONER IN THE FIELD.

I HAVE HAD THE DAY-TO-DAY RESPONSIBILITY FOR A LARGE URBAN DETENTION CENTER AS WELL AS STATE REFORM SCHOOLS FOR ADJUDICATED DELINQUENTS. I HAVE DEVELOPED AND RUN STATEWIDE SYSTEMS OF COMMUNITY BASED ALTERNATIVES FOR ADJUDICATED DELINQUENTS.

AS COMMISSIONER OF CHILDREN AND YOUTH IN PENNSYLVANIA, I HELPED MPLEMENT THAT STATE'S SUCCESSFUL STATEWIDE JAIL REMOVAL EFFORT. AS A MEMBER OF THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY, I HAVE HELPED THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION PLAN AND IMPLEMENT ITS NATIONAL RESEARCH AND DEVELOPMENT PROJECT FOR THE VIOLENT JUVENILE OFFENDER. CURRENTLY I AM RESPONSIBILE FOR SERVICES TO STATUS OFFENDERS BOTH DIVERTED FROM AND APPEARING IN FRONT OF THE FAMILY COURT IN ESSEX COUNTY. (ESSEX COUNTY IS COMPRISED OF THE CITY OF NEWARK AND THE SURROUNDING 21 MUNICIPALITIES)

FROM ONE POINT OF VIEW, JUVENILE JUSTICE AND, BY EXTENTION, WE IN THE FIELD, OFTEN SEEM TO BE INVOLVED IN SOME KIND OF TURMOIL -- TRAPPED BY SEEMINGLY UNANSWERABLE QUESTIONS OR PARADOXES. ARE WE BEING TOO TOUGH OR TOO LENIENT? DIVERTING TOO MANY YOUTH FROM THE SYSTEM OR TRAPPING MORE KIDS IN SOCIAL CONTROL MECHANISMS? SHOULD WE CONCENTRATE ON PUNISHMENT OR TREATMENT? SHOULD WE TREAT JUVENILE OFFENDERS AS YOUTH OR ADULTS? SHOULD STATES BE ALLOWED TO DEVELOP THEIR OWN PLANS AND POLICIES OR SHOULD THERE BE NATIONAL OVERSIGHT?

MR. CHAIRMAN, YOU AND THE ENTIRE SUB-COMMITTEE ARE TO BE COMMENDED FOR YOUR EFFORTS TO INSURE THAT JUVENILE JUSTICE ISSUES CONTINUE TO GET APPROPRIATE NATIONAL ATTENTION. I DON'T THINK IT IS A MEANINGLESS ASIDE TO NOTE THAT THE PUBLIC DOES NOT SEEM TO QUESTION THE ROLE OF THE FEDERAL GOVERNMENT IN SETTING THE DRAFT, VOTING AND,

PERHAPS, DRINKING AGE FOR YOUNG PEOPLE. HOWEVER, WHEN IT COMES TO LEGISLATING NATIONAL STANDARDS FOR JUVENILE JUSTICE, FREQUENTLY THE PUBLIC, AND MANY OF MY OWN COLLEAGUES, QUESTION THE APPROPRIATE ROLE OF THE FEDERAL GOVERNMENT.

INDEED I WOULD EXPECT THAT IF S. 520 AND S. 522 BECOME LAW, STATES WILL IMMEDIATELY CONTEST IN THE COURTS THE PREMISE THAT THE CONSTITUTIONAL RIGHTS OF JUVENILES ARE VIOLATED BY SECURE CONFINEMENT.

YOUR HEARING TODAY FOCUSES ON TWO ISSUES: THE SECURE CONFINEMENT OF STATUS OFFENDERS (S. 520) AND THE USE OF JAILS FOR YOUTH (S. 522). FROM PERSONAL EXPERIENCE I CAN ATEST THAT BOTH OF THESE ISSUES MERIT YOUR INTERVENTION. DESPITE THE EFFORTS OF THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, VOLUNTARY COMPLIANCE HAS BEEN AT BEST A HAPHAZARD STRATEGY. DURING THE LAST YEAR I HAVE PERSONALLY INTERVIEWED YOUTH AND/OR REVIEWED CASE FILES WHICH CLEARLY DOCUMENT THE CONTINUED USE OF SECURE CONFINEMENT OF THE JUVENILE NON-OFFENDER IN JURISDICTIONS AS DIVERSE AS FLORIDA, NEW HAMPSHIRE, SALT LAKE CITY AND IDAHO.

IN ADDITION, I HAVE INSPECTED COUNTY JAILS IN 5 DIFFERENT STATES WHICH CONTINUE TO ROUTINELY USE JAILS TO DETAIN JUVENILE OFFENDERS. DESPITE WHAT THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION MIGHT CLAIM, I SEE NO DRAMATIC RESOLUTION TO THE PROBLEMS OF USING JAILS.

LET ME OFFER ONE EXAMPLE: THE STATE OF CALIFORNIA ROUTINELY IN MANY OF ITS COUNTIES USES JAILS TO CONFINE JUVENILE OFFENDERS. AN INTERNAL REPORT OF THE CALIFORNIA YOUTH AUTHORITY HAS ESTIMATED THAT APPROXIMATELY 100,000 YOUTH/YEAR ARE DETAINED IN LOCAL JAILS AND LOCK-UPS. COMPARE THIS FIGURE TO PENNSYLVANIA'S EXPERIENCE; BETWEEN 1978 AND 1980 PENNSYLVANIA TOTALLY IMPLEMENTED A SUCCESSFUL JAIL REMOVAL EFFORT.

MR. CHAIRMAN, WE HAVE BEEN TRYING TO RESOLVE THE ISSUE OF THE SECURE DETENTION OF STATUS OFFENDERS AS WELL AS THE USE OF JAILS FOR A NUMBER OF YEARS ON A VOLUNTARY BASIS. IT IS MY OPINION THAT WE WILL NOT GET TOTAL RESOLUTION OF THESE ISSUES UNLESS NATIONAL LEGISLATION IS ENACTED.

I HAVE GIVEN YOUR STAFF TWO SEPARATE DOCUMENTS. THE FIRST, ALTERNATIVES TO IMPRISONING YOUNG OFFENDERS, PUBLISHED BY NCCD,

CONTAINS OUTLINES OF OVER 40 PROGRAMS -- SOME DESIGNED AS OPTIONS TO SECURE DETENTION, OTHERS DESIGNED AS DISPOSITIONAL ALTERNATIVES FOR STATUS OFFENDERS. IN ADDITION TO ALTERNATIVE PROGRAMS, IN ORDER TO PREVENT THE SECURE DETENTION OF STATUS OFFENDERS, THERE NEEDS TO BE A 24 HOUR/7 DAY A WEEK ACCESS TO ALTERNATIVE PROGRAMS FOR LAW ENFORCEMENT. IN GENERAL, THE POLICE USE SECURE DETENTION FOR THE NON-OFFENDERS BECAUSE NO OTHER OPTIONS EXIST.

PENNSYLVANIA ACCOMPLISHED THE COMPLETE REMOVAL OF STATUS OFFENDERS FROM SECURE CUSTODY BY MANDATING THAT CHILD WELFARE DEVELOP APPROPRIATE OPTIONS IN MUCH THE SAME MANNER THAT CHILD WELFARE HAD DEVELOPED OPTIONS FOR YOUNGER ABUSED OR DEPENDENT YOUTH.

IN ESSEX COUNTY, NEW JERSEY, WE HAVE SUCCEEDED IN KEEPING STATUS OFFENDERS OUT OF SECURE CUSTODY BY IMPLEMENTING A 24 HOUR CRISIS INTERVENTION HOTLINE AND RESPONSE SERVICE, BACKED UP BY ONE 12 BED GROUP HOME.

THE SECOND DOCUMENT I GAVE TO YOUR STAFF IS A PACKAGE OF MATERIALS PREPARED BY THE NATIONAL COALITION FOR JAIL REFORM. ONCE AGAIN SUCCESSFUL PROGRAM MODELS ARE OUTLINED AND A DESCRIPTION OF THE SYSTEM ISSUES (e.g. INTAKE CRITERIA, AVAILABILITY OF SECURE DETENTION, DETENTION OPTIONS, etc.) THAT NEED TO BE ADDRESSED IN ORDER FOR A SYSTEM TO SUCCESSFULLY STOP USING JAILS FOR YOUNG PEOPLE IS PRESENTED.

## SPECIFIC RECOMMENDATIONS
## REGARDING S. 522

THIS STATUE SHOULD BE WRITTEN TO PROHIBIT THE USE OF JAILS FOR ALL JUVENILES EXCEPT THOSE BEING TRIED (OR CONVICTED) AS ADULTS FOR FELONIES. THE CURRENT EXCEPTIONS TO JAIL REMOVAL OUTLINED IN S. 522 ARE MUCH TOO BROAD. GRANTING EXCEPTIONS ONLY DELAYS COMPLIANCE.

IN ESSENCE THE EXCEPTIONS OUTLINED IN THE CURRENT BILL COVER THREE SPECIFIC CASES.

1. SPARSELY SETTLED AREAS
2. YOUTH ACCUSED OF SERIOUS CRIME
3. YOUTH WHOSE DETENTION IN A FACILITY MAY POSE "LIKELIHOOD OF HARM" TO OTHER JUVENILES

BOTH TWO AND THREE (ABOVE) ARE NOT DEFINED VERY CONCRETELY. STATES CURRENTLY HAVE PROVISIONS FOR THE WAVIER OR TRANSFER FROM JUVENILE

TO ADULT COURT FOR THE SERIOUS JUVENILE OFFENDER . TYPICALLY THESE WAIVER OR TRANSFER PROVISIONS ARE LINKED TO THE SERIOUSNESS OF THE CRIME, THE AGE OF THE OFFENDER AND THE AMENABILITY OF THE JUVENILE TO TREATMENT IN THE JUVENILE SYSTEM. I WOULD RECOMMEND DROPPING BOTH THE "SERIOUS CRIME" AND "LIKEIHOOD OF HARM" EXCEPTIONS. SUCH CASES CAN BE HANDLED BY EXISTING TRANSFER OR WAIVER PROVISIONS IN STATE LAW.

THE SPARSELY SETTLED ISSUE IS A BIT DIFFERENT. CLEARLY THIS IS A LEGITIMATE ISSUE;HOWEVER,IF APPROPRIATE FUNDING IS AVAILABLE, ADEQUATE SECURE DETENTION CAN BE PROVIDED EVEN IN VERY REMOTE AREAS.

CONSIDER THAT IN SPARSELY SETTLED AREAS THE NEED FOR SECURE DETENTION WILL BE LIMITED,IF THERE EXIST DECENT DETENTION CRITERIA. OJJDP FUNDING AND TECHNICAL ASSISTANCE NEED TO BE PROVIDED IN ORDER TO INSURE THAT IN SPARSELY SETTLED AREAS THE FOLLOWING GOALS ARE ACCOMPLISHED:

1. CLEAR AND SPECIFIC INTAKE CRITERIA
2. REGIONAL - RATHER THAN COUNTY DETENTION SYSTEMS (IN MANY CASES A GROUP OF COUNTIES WITH STATE OR FEDERAL AID CAN AGREE TO JOINTLY FUND THE OPERATION OF A SMALL DETENTION CENTER)
3. CREATIVE ASSISTANCE WITH THE PROBLEMS OF TRANSPORTATION (e.g. TRANSPORTATION PROVIDED BY THE STATE POLICE, ON CALL LOCAL POLICE FUNDED WITH STATE OR FEDERAL MONEY, OR OTHER AD HOC ARRANGEMENTS)
4. THE CREATION OF FLEXIBLE SECURE DETENTION OPTIONS THAT ARE ONLY STAFFED WHEN THERE IS A YOUTH IN CUSTODY WHO NEEDS SECURE DETENTION (SUCH ARRANGEMENTS COULD BE DEVELOPED USING LOCAL HOSPITALS, OTHER CHILD CARE FACILITIES OR EVEN CIVIL DEFENSE AREAS).

IN ANY EVENT THE "SPARSELY SETTLED" ISSUE NEEDS TO BE MORE CLEARLY DEFINED. GIVEN SOME OF THE TACTICAL PROBLEMS IN REMOTE AREAS, I WOULD RECOMMEND THAT SUCH AREAS BE GIVEN AN ADDITIONAL YEAR IN ORDER TO COME INTO COMPLETE COMPLIANCE WITH THE JAIL REMOVAL PROVISIONS OF THE ACT.

Senator SPECTER. Thank you very much. We very much appreciate your being here and again express regret that we do not have longer to hear from you, but perhaps we will have further hearings at which time we can find some greater opportunity.

We shall be consulting with you through staff, Mr. DeMuro, to get the benefit of your thinking. Thank you all very much for coming. The hearing is adjourned.

[Whereupon, at 4 p.m., the subcommittee adjourned to reconvene at the call of the Chair.]

# APPENDIX

## ADDITIONAL SUBMISSIONS FOR THE RECORD

OFFICE OF THE COUNTY EXECUTIVE
CITY-COUNTY GOVERNMENT CENTER
160 SOUTH MACY STREET - 4th FLOOR
FOND DU LAC, WISCONSIN 54935
PHONE (414) 929-3185

June 11, 1984

The Honorable Orrin G. Hatch
135 Russell Senate Office Building
Washington, D.C. 20510

RE: Senate Bills 520 and 522

Chairman Hatch, and Members of the Committee:

I am County Executive of Fond du Lac County, Wisconsin. Our County has 89,000 people and is the 13th largest County in the state so I am sure that my testimony will apply to many other counties in Wisconsin.

We are opposed to the jail removal mandates of Senate Bills 520 and 522 because we simply cannot afford separate facilities for the few juveniles we incarcerate. We also do not believe that jail has been proven the worst alternative for delinquent youth, considering the circumstances in which they may find themselves after they have taken advantage of the unlimited liberty to run which Senate Bill 520 would afford.

We have an average of two juveniles per day incarcerated in a portion of the Fond du Lac County jail which keeps them separated from the adults. This includes both juveniles charged with offenses which would be crimes if committed by adults and repeated non-secure custody violations. Our adult correctional staff oversees both juvenile and adult prisoners, and is trained in juvenile, as well as adult detention.

The programs we have in place already divert first time status offenders. We have reduced the number of juveniles confined in jail by over fifty percent since 1978. When a juvenile is taken into custody in our County, he or she is taken to Juvenile Intake (annual budget $80,820) for screening. We maintain 24 hour, seven day coverage in this program.

The first time status offenders are sent to the Shelter Care facility (annual budget $100,000), or to a social services receiving home or released to the custody of the parents, if that is appropriate. Repeated or serious offenders go to jail for generally short periods of time until a court appearance. In 1983 we detained 147 juveniles in jail. Seventy of those juveniles were held in jail less than 24 hours. Sixteen happened to be taken into custody on a weekend and appeared in court on Monday.

The County also operates a group home for adjudicated delinquent boys, (annual budget $100,000). The home has been in operation for two years without incident and serves as an alternate to incarceration in the state institution for juveniles at Lincoln Hills. We believe that there is a great deal to be gained by keeping the juvenile and his family as close together as possible so that we can help them work out their family problems.

We also operate a Juvenile Restitution program (annual budget, $50,000) so that juvenile offenders have an opportunity to earn the money to repay the victims of their crimes.

It is important to recognize that the statistics you are given on juvenile detention in jails that refer to violations of non-secure custody do not reflect an accurate picture. A juvenile with a prior record of charges that would be misdemeanor or felony charges for adults, who is currently in non-secure custody, and violates that non-secure custody, will be brought into court on a charge of violating his non-secure custody status. We are often dealing with a great deal more than a juvenile who has run away, and the judge must take that into account in the disposition of the case.

Nineteen of the juveniles we held in jail last year were held for crimes that would be felonies if they had been committed by adults. Two sixteen year olds were in for murder. One was convicted of murdering a woman who had been a witness in a previous court appearance which had resulted in his serving a term at Lincoln Hills. The boy had been placed in foster care when he was released; he obviously needed a higher level of supervision than he was given. The other was convicted of killing three members of his family and attempting to kill a fourth. One was housed in our jail for a year while his attorneys fought his waiver to adult status for the crime. The other also had a protracted stay in our County jail while his attorneys appealed his waiver. These two cases accounted for over one half of our juvenile days in jail last year.

Senate Bill 522 states that "juveniles account for nearly twenty per centum of the arrests for crimes in the United States today." I would strongly suggest that each member of your Committee check with his local jail, to see if 20 percent of the criminal arrests made are indeed juveniles, and what is more important from the financial standpoint of providing secure detention facilities, how long these juveniles are actually confined in secure detention, compared to the length of time served by adults charged and convicted of the same crimes. Incarcerated juveniles account for less than 5 percent of the daily number of inmates incarcerated in the Fond du Lac County jail.

Our average of two juveniles confined per day includes the habitual runaways who have repeatedly run from our Shelter Care facility or our Group Home for adjudicated delinquent boys, or other child-caring institutions.

If you examine the records of the habitual runaways, I think that you will very soon be persuaded that being temporarily held in jail is preferable to some of the alternatives the runaways find for themselves. We detained one 15 year old girl four times last year. The fourth time she was detained, the record states:

> "This girl was expected to enter a group home on August 1. She ran from home, left the state with an adult male on July 11, 1983, was picked up in Illinois, returned to Fond du Lac, and was securely detained. Adult later prosecuted for sexual liberties and physical threats to other young female runaways. Placed in a different group home on October 3, 1983."

A fourteen year old girl who was also securely detained four times last year has this in the record of third incident:

> "Ran on September 9, 1983 from a non-secure custody order, placing her at her mother's home, allegedly to avoid appearance in court as a victim of sexual abuse (by men who were later convicted and sent to prison) which occurred while she was on the run with those adult males to Mississippi earlier that month. She was apprehended and securely detained by Intake."

I doubt very much that the men who wrote the Fifth Amendment to the Constitution mentioned in Senate Bill 522 ever envisioned that the prohibition against deprivation of liberty without due process of law would ever by used to allow 14 and 15 year old girls the "liberty" to be victimized at will.

Senate Bill 520 states as its purpose to "protect dependent children from institutional abuse". It is remarkably silent on how we are to protect those same dependent children from the abuses they encounter on the streets. Senate Bill 522 purports to "promote the public welfare by removing juveniles from adult jails." A separate secure juvenile detention facility would cost Fond du Lac County a minimum of $250,000 annually just to staff; it would cost us over $340 per juvenile per day even if you allowed secure detention for the repeater runaways to be in the

same building as the juveniles charged with offenses which would be considered crimes if committed by adults. I can assure you that the taxpayers I represent would not consider that such an exorbitant expenditure would "promote the public welfare." We already fund, at considerable expense, several less restrictive alternatives than incarceration in our adult jail. Both the eight bed Shelter Care facility and the Group Home which we operate cost an average of $20 more per person per day than it costs to operate the County jail, because of the economies of scale that we are able to achieve in the larger operation.

The only "welfare" Senate Bill 522 will promote is the "welfare" of the additional bureaucrats we will have to employ to staff the facility.

The suggestion has been made that we try to establish regional secure juvenile detention facilities. In order to make such a center economically feasible to operate, several counties would have to be involved. The distances one would have to travel in order to bring someone back for a court appearance would consume a great deal of staff/travel time which is certainly part of the cost, would encourage underutilization of the facility, and result in making the daily rate prohibitive. The nighttime transports, precipitous releases or hastily arranged supervisions which will necessarily accompany reliance on a regional detention center many miles from home may be more traumatic for juveniles than whatever stigma attaches to being temporarily in the same building used to lodge adults. I do not believe that placing a juvenile in an adult jail facility is such a consummate evil that it should be prevented at all costs.

Children who have no restraints put on their behavior will grow into adults who have learned to expect that personal gratification is paramount, no matter what consequences it may have for the rest of society. In Senate Bill 522, "the Congress further finds that the holding of juveniles in adult jails and lockups constitutes punishment, violates the juveniles' due process right to fundamental fairness and unnecessarily endangers the personal safety of juveniles." The Congress should also consider "fundamental fairness" for the rest of society which includes some recognition of the burdens placed upon that society if its children are allowed to do whatever they wish, whenever they wish, wherever they wish.

Certainly the people we all represent expect us to thoroughly investigate the cost/benefit ratios of the programs for which we levy taxes. It is my opinion that neither the costs, nor the benefits we are supposed to reap from Senate Bills 520 and 522 have been presented realistically--at least for Fond du Lac County. We think that what we have is superior to what your mandates would force upon us. We respectfully urge that you refuse to recommend either of these bills.

Very truly yours,

M. Anita Anderegg

M. ANITA ANDEREGG
County Executive

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 1, 1984

The Honorable Ted Stevens
United States Senate
Committee on Appropriations
Washington, D.C. 20510

Dear Senator Stevens:

Your recent letter concerning the Juvenile Justice and Delinquency Prevention Act (JJDPA) brought to mind several issues concerning the Act which apply in many respects to a variety of other federal programs.

As you noted, the Act is up for reauthorization this year. However, reauthorization is likely to be meaningless to Alaskans. The substantive requirements of the Act, implementing regulations, and in particular the time frames established for meeting those requirements were clearly developed for application to urban and more highly developed states with strong local government systems and infrastructures, neither of which, as you know, exists in Alaska.

Although apparently not reflected in reports you have reviewed, Alaska has been and is currently in compliance with the deinstitutionalization requirements of the Act and eligible for receipt of JJDPA grants. However, the separation and jail removal provisions remain problematic to the State and would require an immediate minimum capital investment of $50 million to construct facilities for juvenile offenders throughout the State if Alaska is to remain eligible for JJDPA funds after December 1985.

Although, as you pointed out, the appropriation to fund JJDPA programs nationally is substantial, the population-based formula for distributing grants under the JJDP Act and other similar federal programs results in a very minute proportion of those funds' being allocated to the State of Alaska. While these formulas are equitable on their face, they do not take into account the vastly differing circumstances found in the states, the disparity in costs of operating programs, and the substantial differences in the base lines from which states begin in implementing the programs.

Alaska, of course, receives the minimum allocation available under the JJDP Act - $225,000. We must devote at least $16,250 to fund an advisory committee leaving only $209,750 for actual operation of the program. This is sufficient to fund perhaps two small or one moderately-sized diversion

program in rural Alaska. Of course, this is only a fraction of the amount needed to meet the requirements that securely confined juveniles be separated from adults, and is only a minute proportion of the amount which would be necessary to meet the jail removal requirements.

The minimum allocation is then small incentive for Alaska to participate in the JJDP Act formula grant program. This is particularly true in light of the burdensome administrative requirements and the resources (staff, travel, etc.) which must be devoted to meeting reporting and other administrative requirements.

While we recognize the merit of goals embodied in the JJDP Act, the Act itself will prove of little value to Alaska citizens if its provisions remain so inflexible as to preclude Alaska's involvement in the program and/or if the benefit to Alaskans from the program remains at such a low level.

Though we may be precluded in the future from receiving JJDP Act formula grant funds because of the inflexibility and unrealistic nature of the provisions and regulations, we will nonetheless continue our own State-initiated efforts to accomplish the goals of the JJDP Act and of our own State statutes.

I have included for your review a synopsis of the provisions of the Act and regulations which have proven problematic to us, and a description of the difficulties we face in maintaining our compliance in the future. I would appreciate your consideration of these difficulties and any effort you may be able to devote to alleviating these problems through amendment of the Act.

Sincerely,

Bill Sheffield
Governor

Enclosure

SYNOPSIS
of
PROBLEMS ALASKA FACES
IN MAINTAINING COMPLIANCE WITH JJDP ACT

The JJDP Act has three major substantive requirements: (1) deinstitutionalization of status/nonoffenders; (2) separation of juveniles from adult prisoners in secure confinement; (3) Elimination of the practice of detaining juveniles in adult jails - jail removal. Of these, the latter two are problematic for Alaska.

The separation requirement [Section 223 (a)(13)] specifies that, if detained, youths must not be confined in any institution in which they will have regular contact with adult prisoners. Regulations define regular contact as sight and sound contact with incarcerated adults, including trustees. Regulations indicate that this requirement permits no more than haphazard or accidental contact between juveniles and adults.

The jail removal requirement [Section 223 (a)(14)] specifies that by December 8, 1985 states must assure that no juvenile is detained or confined in any jail or lockup for adults but allows OJJDP to "...recognize the special needs of areas characterized by low population density with respect to the detention of juveniles..." and "...permit the temporary detention in such adult facilities of juveniles accused of serious crimes against persons..." where no existing acceptable alternative placement is available and if sight and sound separation is maintained. Regulations allow juveniles accused of homicide, rape, mayhem, kidnapping, aggravated assault, robbery and extortion to be held for only up to 48 hours in adult jails in specific geographic areas having low population density based on approved criteria.

Alaska faces enormous difficulties in meeting the requirements of these two provisions. Alaska has 17 facilities which hold juveniles following arrest, pending trial, or upon order of the Superior Court. Of these, only three are juvenile facilites. All others are adult jails in rural areas. If a juvenile in these areas must be securely confined to protect either the juvenile or the community no alternative to detention in one of these rural jails exists. Rural jail facilities are almost invariably designed only to meet minimum requirements for secure confinement and in many instances do not provide the required complete sight and sound separation of juveniles from adult prisoners. While attempts are made to transport juveniles to one of the three juvenile facilities - located in Anchorage, Fairbanks, and Nome - as soon as possible, extreme weather, limited transportation schedules, lack of available law enforcement staff for immediate escort and similar difficulties often preclude immediate transport. Juveniles who must be securely confined pending transportation to a more suitable facility will be held in adult facilities. In many instances, inclement weather alone will result in delays far beyond the 48 hour grace period allowed in JJDP Act regulations. However, despite a lack of sight and sound

separation, this practice is preferable to endangering the juvenile or the community.

In addition to such exigencies as inclement weather and limited transportation schedules, no provisions are made under the Act or its implementing regulations to allow for the secure confinement of suicidal or otherwise self-destructive juveniles in adult facilities pending transport to a more appropriate facility equipped to deal with these individuals on a longer term basis. In rural Alaska there frequently is no alternative to safely house these persons.

Another significant problem in rural Alaska is the frequent necessity of confining in adult jail facilities juveniles incapacitated by alcohol or drugs. In many rural areas no other facility exists to provide even minimal safety for such persons when responsible adults can not be found to assume custody of them. The operation of 24 hour sleep-off programs would be prohibitively expensive (generally far beyond the total amount received annually by Alaska under the JJDP Act). While it is less than desirable for juveniles to be confined in adult facilities for these purposes it is far more preferable than simply ignoring the problem when exposure for even a short time in the extreme sub-zero temperatures found in vast areas of rural Alaska would result in severe injury, or death.

In order for Alaska to even begin to meet the jail removal provision of the JJDP Act by December, 1985 as required by the Act, immediate construction of a minimum of five regional detention facilities would be necessary at an average cost of approximately $10 million per facility. Even if such construction were to occur it is doubtful that Alaska could meet separation and jail removal requirements since transportation to these facilities would still be required from smaller villages in catchment areas associated with the regional facilities. Inclement weather and transportation problems would still doubtless result in many instances of juveniles being held in adult facilities contrary to the requirements of the JJDP Act and its implementing regulations. Because of these instances Alaska would in all probability not meet criteria for eligibility to receive JJDP Act formula grant funds.

In addition to the problems Alaska encounters in meeting the major substantive requirements of the Act, administrative requirements of the Act and its regulations are burdensome requiring a disproportionate amount of staff time and travel expense for the limited benefit Alaskan citizens derive from receipt of the $225,000 annual allocation. In order to receive the annual allocation states must establish a 15 member juvenile advisory group, prepare a detailed analysis of juvenile crime problems and juvenile justice and delinquency prevention needs within the state, a plan for addressing the needs and problems found, an annual performance report detailing the state's progress in implementing the approved plan, and must monitor each facility in the state holding juveniles in secure confinement collecting and reporting detailed data to document compliance with the substantive requirements of the Act.

In general, then, the separation and jail removal provisions of the Act are far too restrictive and narrowly defined to be applicable to Alaskan conditions. Despite ongoing efforts of the State to meet these requirements it is clear that, within the time frames established in the Act, Alaska will not be in compliance and will become ineligible to receive future JJDP Act formula grant funds. The administrative requirements of the Act are overly burdensome, particularly in light of the limited allocation received by the State of Alaska. The method for determining allocations obviously does not take into account the varying conditions found in different states and the differing levels of need. The population-based formula for determining grant allocations and the minimum allocation level for states are clearly unrealistic in light of the requirements of the Act.

Only significant alterations in requirements of the Act and substantial increases in regulatory flexibility will allow Alaska to continue eligibility for and participation in the JJDP Act formula grant program. These can be achieved through amendment of the operant sections of the Act [Sections 223 (a)(12), (13), (14)] and attendant changes in regulations (28 CFR 31.303). Only alteration of the formula for determining allocations to states will increase the worth of the program to Alaskans.